

**Kentucky Retirement Systems Board of Trustees
Annual Board Meeting
April 12, 2022, 10:00 a.m. EST
Live Video Conference/Facebook Live
AGENDA**

- | | |
|--|---------------------------------|
| 1. Call to Order | Keith Peercy |
| 2. Legal Public Statement | Office of Legal Services |
| 3. Roll Call/Public Comment | Sherry Rankin |
| 4. Approval of Minutes – March 2, 2022 and
March 31, 2022* | Keith Peercy |
| 5. Trustee Vacancies | John Chilton |
| 6. Results of the 2022 KERS Election* | Kristen Coffey |
| 7. New Trustee Introduction and Oath of Office | John Chilton |
| 8. Former Trustee Recognitions | John Chilton |
| 9. KRS Regulations*
105 KAR 1:450 and 105 KAR 1:450E | Carrie Bass |
| 10. Election of KRS Board of Trustee Officers*
Chair and Vice Chair | John Chilton |
| 11. Committee Assignments | Board Chair |
| 12. KPPA Update | Rebecca Adkins |
| 13. KRS Update | John Chilton |
| 14. Closed Session** - Litigation | Board Chair |
| 15. Adjourn* | Board Chair |

**Board Action Required*

***Board Action May Be Required*

MINUTES OF MEETING
BOARD OF TRUSTEES KENTUCKY RETIREMENT SYSTEMS
MARCH 2, 2022 AT 10:00 AM ET
VIA LIVE VIDEO TELECONFERENCE

At the meeting of the Kentucky Retirement Systems Board of Trustees held on March 2, 2022, the following members were present: Keith Peercy (Chair), Bruce Brown, John Cheshire, Raymond Connell, Joseph Grossman, Lynn Hampton, Prewitt Lane, Pamela Thompson, and Larry Totten. Staff members present were KRS CEO John Chilton, CERS CEO Ed Owens, III, David Eager, Rebecca Adkins, Erin Surratt, Michael Board, Steven Herbert, Victoria Hale, Connie Pettyjohn, Kristen Coffey, Ann Case, Connie Davis, Shauna Miller, Steve Willer, Jared Crawford, Madeline Perry, D’Juan Surratt, Ashley Gabbard, Shaun Case, Glenna Frasher, and Sherry Rankin. Others in attendance included Ryan Stippich with Reinhart Boerner Van Deuren; and Tracey Garrison with Humana.

Mr. Peercy called the meeting to order.

Mr. Michael Board read the Legal Public Statement.

Ms. Sherry Rankin called roll.

Ms. Sherry Rankin acknowledged the receipt of one public comment, and read the following: “As a member of the Kentucky Public Pension Authority (KPPA), I write on the issue of investments made by the KPPA into a Russian bank. On the latest listing of investments made public by the KPPA and dated December 31, 2021, the KPPA showed an investment of more than \$2.2 million in “Sberbank of Russia PJSC ADR” (page 77, row 10). Sberbank is a state-owned bank of the Russian government and often considered the largest bank in Russia. As a result of the wide-scale military invasion by Russia into Ukraine commencing February, 24, 2022, it is clearly morally wrong to continue holding this investment in Sberbank or any other investments tied to the Russian government. I urge the KPPA Board to take action to divest this investment quickly. I do not want my pension contributions to be used to fund this unprovoked and violent attack on the free and democratic people of Ukraine. I am confident that Kentucky government workers and Kentucky taxpayers feel the same way. I appreciate your attention to this matter and thank you for your service on the KPPA Board. Scott Sedmak”

Mr. Eager stated that Steven Herbert and the Investment team are determining our total exposure to the Russian market and will bring that information to the respective Investment Committees for further discussion and direction.

Mr. Peercy introduced agenda item *Approval of Minutes – December 2, 2021, January 11, 2022, January 14, 2022 and January 21, 2022*. Mr. Cheshire made a motion and was seconded by Mr. Grossman to approve all of the minutes as presented. The motion passed unanimously.

Mr. Peercy introduced agenda item *Approval of KRS Board Election Policy*. Ms. Coffey stated that the current KRS Board Election Policy was approved in April, 2021 and since then, a few updates were needed before the next election starts. She indicated that the biggest change is regarding the application portion of the policy, wherein an applicant can now submit an application through the KPPA website using DocuSign, in addition to the traditional submission through an email or in person at KPPA. She stated another addition to the policy is that the applicants also have to submit a picture with their application. Ms. Coffey indicated that the current House Bill 297 would allow KPPA to exclude a member's address that has been marked as invalid in the KPPA system. She provided the updated wording that will be included should that provision of House Bill 297 pass. Mr. Totten made a motion and was seconded by Mr. Cheshire to approve the KRS Board Election Policy as presented. The motion passed unanimously.

Mr. Peercy introduced agenda item *Update on KRS Trustee Election*. Ms. Coffey announced that the total of overall votes in the most current KERS Trustee Election was 4,943, with voting now closed but additional time is being given for any remaining paper ballots with proper postmark dates to be received. She stated that the overall turnout for this election was 3.58%.

Ms. Coffey explained that the term of office for Mr. Peercy, Trustee for the State Police Retirement System expires on March 31, 2023. She announced that a request for nomination will be sent to all State Police Retirement System members in May 2022, with application submissions due by July 31, 2022. Mr. Grossman questioned if further research could be conducted to determine why the voter turnout was so low. Mr. Eager stated that staff is looking into ways of increasing future participation. The information provided in this section was for informational purposes only.

Mr. Peercy introduced agenda item *Amendments to KRS Investment Policy Statement*. Mr. Lane introduced Mr. Herbert who reviewed the amendments made to the KRS Investment Policy Statement. Mr. Herbert stated some additional language was incorporated which included a

paragraph regarding ESG (Environment, Social and Governance) and the process to implement portfolio accounting system that included plan accounting and unitization methods. Mr. Herbert continued to review the remainder of the changes made to the policy. Mr. Connell made a motion and Mr. Cheshire seconded to approve the KRS Investment Policy Statement with the exception of the ESG paragraph which will be removed and be revisited at a future meeting. Mr. Lane and Ms. Hampton abstained, Mr. Totten voted no, however, the motion passed with majority vote.

Mr. Herbert then reviewed the changes made to the Investment Administrative Policies, namely the Securities Litigation Policy, Brokerage Policy, Investment Transaction Procedures Policy, Manager and Placement Agent Statement of Disclosure, Investment Proxy Voting Policy, Real Estate Policy, Investment Securities Lending Guidelines, and Securities Trading Policy. Mr. Grossman made a motion and was seconded by Mr. Cheshire to ratify the KRS Investment Committee's approval of the listed policies. The motion passed unanimously.

Mr. Percy introduced agenda item *Joint Audit Committee Reports and Recommendations*. Ms. Hampton reported that the Joint Audit Committee met on February 22, 2022, and several items were deferred to a later meeting, including the Proportionate Share Audits, Results of the Plan Liquidity Audit, Additions to the Current Audit Plan, Internal Audit Budget and the status of current internal audits. Ms. Coffey reviewed the material presented for informational purposes including the KPPA Archives Policy, Financial statements for the quarter ended December 31, 2021, Follow-up on the 2021 Annual Comprehensive Financial Report, Fiscal Year End June 30, 2021 End of Year Audit Requirements, APA Approval Request for the Fiscal Year 2022 External Audit, Information disclosures, and anonymous tips. Mr. Connell made a motion and was seconded by Mr. Lane to adopt the internal audit report as presented. The motion passed unanimously.

Mr. Percy introduced agenda item *Joint Retiree Health Plan Committee Reports and Recommendations*. Mr. Totten reported that the Joint Retiree Health Plan Committee met on February 10, 2022 and reviewed an informational presentation from Humana regarding Account Management for 2021. Ms. Pettyjohn indicated that due to a calculation error, there was a premium reduction of \$1.26 on the Prescription Drug Plans for 2022 which is lower than what the Boards approved in September 2021. This presentation was for informational purposes only.

Mr. Percy introduced agenda item *Quarterly Reports*. Ms. Adkins reviewed the Quarterly Financial Reports ending December 31, 2021, including the Combining Statement of Fiduciary Net

Position for both Pension and Insurance Funds, Combining Statement of Changes in Fiduciary Net Position for both Pension and Insurance Funds, KPPA Administrative Budget 2021-2022 - Second Quarter Budget-to-Actual Analysis, Contribution Reports for both Pension and Insurance Funds, KPPA Outstanding Invoices, and Penalty Waivers Report. This presentation was for informational purposes only.

Mr. Percy introduced agenda item *House Bill 8 Update*. Ms. Adkins stated that at the December 2, 2021 meeting, the Board approved the staff recommendations for House Bill 8 appeals. Ms. Adkins indicated that the recommendation that the Board approved was the method of process due to finding errors in the working spreadsheet. Ms. Adkins stated that the errors were corrected and provided the results of the appeals based on the Board-approved process. Mr. Totten questioned whether the newly filed Senate Bill 270 would have an impact on this process. Ms. Adkins indicated that staff would be looking closely into this and will report back at a later date. This presentation was for informational purposes only.

Mr. Percy introduced agenda item *Department Spotlight – Member Services*. Ms. Shauna Miller, Division Director of the Office of Benefits – Division of Member Services provided a high-level overview of the Division of Member Services. She reviewed the roles and responsibilities of the department, current statistics of the services provided to members, current retirement trends, the enhancements to the member self-service features, and future projects and goals of the department. This presentation was for information purposes only.

Mr. Percy introduced agenda item *Legislative Updates*. Mr. Eager provided an update regarding the 2022 Kentucky General Assembly Regular Session Legislative session. He discussed the various bills that would have an effect on the systems that are currently in various stages in the legislative process.

Mr. Percy introduced agenda item *KPPA Updates*. Mr. Eager began by expressing his gratitude to the Trustees for the giving of their time and talents by serving on the various Boards and committees that oversee the systems. He discussed the current status of the office in moving forward to the new normal, with plans for staff to have set schedules for working in office, remotely, or a hybrid schedule. He indicated that the members of the Executive Staff testified before the Public Pension Oversight Board pertaining to House Bill 8. He stated that the cost allocation work group is continuing their discussions and will bring their results to a future KPPA meeting. He

stated that the cessation of Kentucky Housing Corporation and Northern Kentucky University are due to be completed by fiscal year end. He mentioned the importance of IT Security and stressed the need to be mindful of the use of the internet.

Mr. Percy introduced agenda item *KRS Updates*. Mr. Percy indicated that he did not have any updates at this time.

Mr. Percy introduced agenda item *CEO Report*. Mr. Chilton reported that he is in the process of contacting all of the Senators about the separation costs provision included in a recently proposed Amendment to House Bill 297 to provide the explanation of the stance that KRS has taken regarding this subject. He also stated that he will continue to work with the cost allocation work group to finalize the agreement between the systems regarding the separation of expenses.

Mr. Percy introduced agenda item *New Business*. Mr. Percy stated that he had no new business to discuss at this time.

Mr. Percy introduced agenda item *Closed Session*. A motion was made by Mr. Grossman and seconded by Mr. Totten to go in to closed session. The motion passed unanimously.

Mr. Percy read the following statement and the meeting moved into closed session:

A motion having been made in open session to move into a closed session for a specific purpose, and such motion having carried by majority vote in open, public session, the Board shall now enter closed session to consider litigation, pursuant to KRS 61.810(1)(c), because of the necessity of protecting the confidentiality of the Systems' litigation strategy and preserving any available attorney-client privilege. All public attendees exited the meeting. The following voiced their recusal and left prior to the beginning of the closed session: Mr. Percy, Mr. Lane, Mr. Cheshire, and Mr. Eager.

Mr. Connell called the meeting back to open session. There being no action taken during the closed session, Mr. Connell opened the floor for a motion to adjourn. Ms. Hampton made a motion and seconded by Mr. Grossman to adjourn the meeting. The motion passed unanimously.

Copies of all documents presented are incorporated as part of the Minutes of the Board of Trustees held March 2, 2022 except documents provided during a closed session conducted pursuant to the open meetings act and exempt under the open records act.

CERTIFICATION

I do certify that I was present at this meeting, and I have recorded the above actions of the Trustees on the various items considered by it at this meeting. Further, I certify that all requirements of KRS 61.805-61.850 were met in conjunction with this meeting.

Recording Secretary

I, the Chair of the Board of Trustees of the Kentucky Retirement Systems, do certify that the Minutes of Meeting held on March 2, 2022 were approved on April 12, 2022.

Chair of the Board of Trustees

I have reviewed the Minutes of the March 2, 2022 Board of Trustees Meeting for content, form, and legality.

Executive Director
Office of Legal Services

**MINUTES OF MEETING
BOARD OF TRUSTEES KENTUCKY RETIREMENT SYSTEMS
SPECIAL CALLED MEETING
MARCH 31, 2022 AT 10:00 AM ET
VIA LIVE VIDEO TELECONFERENCE**

At the special called meeting of the Kentucky Retirement Systems Board of Trustees held on March 31, 2022 the following members were present: Keith Percy (Chair), Bruce Brown, John Cheshire, Joseph Grossman, Lynn Hampton, Prewitt Lane, and Larry Totten. Staff members present were KRS CEO John Chilton, CERS CEO Ed Owens, III, David Eager, Rebecca Adkins, Erin Surratt, Michael Board, Steven Herbert, Victoria Hale, Ashley Gabbard, Glenna Frasher and Sherry Rankin. Others in attendance included Benjamin Lewis and Janet Jakubowicz with Dentons, Eric Branco with Johnson Bowman Branco, and Paul Harnice, Sarah Bishop and Chris Schaefer with Stoll Keenon Ogden.

Mr. Percy called the meeting to order.

Mr. Michael Board read the Legal Public Statement.

Ms. Sherry Rankin called roll.

There being no public comment, Mr. Percy introduced agenda item *Closed Session*. A motion was made by Mr. Lane and seconded by Mr. Grossman to go in to closed session. The motion passed unanimously.

Mr. Percy read the following statement and the meeting moved into closed session:

A motion having been made in open session to move into a closed session for a specific purpose, and such motion having carried by majority vote in open, public session, the Board shall now enter closed session to consider litigation, pursuant to KRS 61.810(1)(c), because of the necessity of protecting the confidentiality of the Systems' litigation strategy and preserving any available attorney-client privilege. All public attendees exited the meeting.

Mr. Percy called the meeting back to open session. There being no action taken during the closed session, Mr. Percy opened the floor for a motion to adjourn. Ms. Hampton made a motion and was seconded by Mr. Totten to adjourn the meeting. The motion passed unanimously.

Copies of all documents presented are incorporated as part of the Minutes of the Board of Trustees held March 31, 2022 except documents provided during a closed session conducted pursuant to the open meetings act and exempt under the open records act.

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CERTIFICATION

I do certify that I was present at this meeting, and I have recorded the above actions of the Trustees on the various items considered by it at this meeting. Further, I certify that all requirements of KRS 61.805-61.850 were met in conjunction with this meeting.

Recording Secretary

I, the Chair of the Board of Trustees of the Kentucky Retirement Systems, do certify that the Minutes of Meeting held on March 31, 2022 were approved on April 12, 2022.

Chair of the Board of Trustees

I have reviewed the Minutes of the March 31, 2022 Board of Trustees Meeting for content, form, and legality.

Executive Director
Office of Legal Services



Kentucky Public Pensions Authority

Internal Audit Administration



To: Members of the Kentucky Retirement Systems Board of Trustees

From: Kristen N. Coffey, CICA *KNC*
Division Director, Internal Audit Administration

Date: April 12, 2022

Subject: 2022 KERS Trustee Election Update

The eligible voters of the Kentucky Employees Retirement System (KERS) elected the following individuals to the Kentucky Retirement Systems Board of Trustees (Board). These individuals will serve a four-year term, commencing on April 1, 2022:

1. Crystal Miller, this will be the first Board term for Ms. Miller.
2. David Adkins, this will be the first Board term for Mr. Adkins.

The election was certified on March 15, 2022. A copy of the certification letter is attached.

A total of 6,141 valid ballots were received – 3,727 electronic and 2,414 paper. An additional 103 invalid ballots were received – 55 with either no candidate selected or more than two candidates selected and 48 unsigned ballots. One ballot was mailed to Kentucky Public Pensions Authority rather than the P.O. Box set up for the KERS election.

In accordance with Kentucky Revised Statute 61.645(4)(b), it will require at least 614 signatures to nominate a candidate by petition for the next KERS trustee election.

A list of forwarding address received from the United States Postal Service has been provided to the Office of Benefits.

Action Needed: We request the KRS Board of Trustees accept the results outlined in Election America's certification letter and declare the election final.

Attachment



March 15, 2022

Mr. Keith Peercy
Chair of the Kentucky Retirement Systems Board of Trustees
Kentucky Retirement Systems
1260 Louisville Road
Frankfort, KY 40601

Dear Mr. Peercy:

We have tabulated ballots of the 2022 Kentucky Employees Retirement System Board of Trustees election, and in accordance with the Kentucky Retirement System's Board of Trustee's Election Policy and Procedures, we hereby certify the results of the 2022 Kentucky Employees Retirement System election.

Thank you. It has been a pleasure working with you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Chris Backert", written in a cursive style.

Chris Backert
CEO
Election-America, Inc.

CC: Mr. John Chilton
Chief Executive Officer, Kentucky Retirement Systems

Mr. David Eager
Executive Director, Kentucky Public Pensions Authority

Ms. Kristen N. Coffey
Director, Division of Internal Audit Administration

1775 I St NW
Suite 1150
Washington, DC 20006

155 Mineola Blvd.
Suite 102
Mineola, NY 11501

4275 Executive Sq.
Suite 200
San Diego, CA 92037

(866) 514-2995 | YesElections.com



Results

Race	Candidate	Votes
Board of Trustees Election	Crystal Miller	3,575
	David Adkins	1,948
	R. Campbell Connell	1,867
	Larry Totten	1,645
	C. Jack Wright	1,189
	Teudis Perez	997
	Write-ins	40

Turnout

Internet	Paper	Total	Electorate	Turnout %
3,727	2,414	6,141	137,998	4.45%

Invalid ballots

- 55 Spoiled (member selected no candidates or more than 2 candidates)
- 48 Unsigned (member did not sign the ballot)

Undervotes (members selected less than the maximum number of permitted votes)

- 815 members selected only 1 candidate (vote was considered valid)

There was one mutilated ballot (not included in the turnout figures above).

The number of voters who returned a paper ballot after voting online: 4 (the first vote processed counted).

The number of ballots postmarked after March 1, 2022: 20

1775 I St NW
Suite 1150
Washington, DC 20006

155 Mineola Blvd.
Suite 102
Mineola, NY 11501

4275 Executive Sq.
Suite 200
San Diego, CA 92037

(866) 514-2995 | [YesElections.com](https://www.YesElections.com)

MEMORANDUM

TO: Board of Trustees of the Kentucky Retirement Systems (“Board”)

FROM: Michael Board, Executive Director, Office of Legal Services
Carrie Bass, Staff Attorney Supervisor, Office of Legal Services

DATE: April 5, 2022

RE: Board approval and authorization of staff to file a new ordinary administrative regulation, 105 KAR 1:450, Quasi-governmental employer reports on independent contractors and leased employees, and an identical emergency administrative regulation, 105 KAR 1:450E, Quasi-governmental employer reports on independent contractors and leased employees, with the Office of the Regulations Compiler at the Legislative Research Commission (Regulations Compiler)

Purpose of new administrative regulation:

Kentucky Revised Statutes (KRS) 61.645(9)(e) authorizes the Board to “promulgate all administrative regulations, not inconsistent with the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705.” 105 KAR 1:450, Quasi-governmental employer reports on independent contractors and leased employees, and an identical emergency administrative regulation, 105 KAR 1:450E, Quasi-governmental employer reports on independent contractors and leased employees, are necessary to carry out the provisions of KRS 61.5991.

105 KAR 1:450, Quasi-governmental employer reports on independent contractors and leased employees, is a new administrative regulation outlining the information that, pursuant to KRS 61.5991, must be provided by certain quasi-governmental employers in the Kentucky Employees Retirement System for some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements. This new administrative regulation clarifies the categories of persons concerning which the quasi-governmental employers must provide information as well as how and when this information is to be provided to the Kentucky Public Pensions Authority (KPPA) on behalf of the Kentucky Employees Retirement System. A new form for providing the required information, the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is incorporated by reference in this regulation.

This new administrative regulation further specifically delegates to the KPPA staff the Board’s authority to determine if persons concerning which information has been provided through this process are employees of a participating quasi-governmental employer in regular full-time positions pursuant to KRS 61.510(5) and 61.510(21).¹ This new administrative regulation explains the notification that will be provided to each quasi-governmental employer when the KPPA staff determines that one or

¹ As a result of a determination that a person is an employee of a participating quasi-governmental employer in a regular full-time position, the person will be required to participate in the Kentucky Employees Retirement System, past employer contributions may be owed by the quasi-governmental employer, and the person may have the option to purchase service for prior periods of “employment” with the quasi-governmental employer.

more persons listed on the Form 6756 are employees of the quasi-governmental employer in regular full-time positions.

Finally, this new administrative regulation clarifies how the KPPA staff will define the data based on the information received from the quasi-governmental employers that must be provided annually to the state budget director's office and the Legislative Research Commission.

Purpose of identical emergency administrative regulation:

Because relevant deadlines in KRS 61.5991 and 105 KAR 1:450 are fast approaching, the Office of Legal Services also advises simultaneously filing an identical emergency administrative regulation, 105 KAR 1:450E, with the Regulations Compiler. The emergency version of the regulation will take effect immediately upon filing with the Regulations Compiler, whereas the ordinary version of the regulation will not take effect until after the regulation has undergone the full public comment period and review process by the Regulations Compiler and the Administrative Regulation Review Subcommittee of the General Assembly (which occurs over several months). The emergency version of the regulation will be allowed to expire after the ordinary version is in effect.

Impact of House Bill 668 (2022):

House Bill (HB) 668 was passed by the General Assembly during its 2022 Regular Session. As of the date of this Memorandum, HB 668 had been delivered to the Governor, but the Governor has not yet taken action on this legislation.² In the event that the Governor vetoes HB 668 and the General Assembly does not override the veto, the current version of KRS 61.5991 (as of the date of this Memorandum) would remain in effect without the changes in HB 668 incorporated. Should HB 668 not become law and the current version of KRS 61.5991 (as of the date of this Memorandum) remain in effect, slightly different versions of 105 KAR 1:450 and its emergency counterpart, 105 KAR 1:450E, will be required.

Therefore, alternate versions of 105 KAR 1:450 and its emergency counterpart, 105 KAR 1:450E, without the changes enacted by HB 668 incorporated are included in the Board's materials, in the unlikely event that the status of HB 668 is unclear as of the Board's meeting on April 12, 2022. These alternate versions are marked, "Alternate – without HB 668," in the footer.

Staff Recommendation:

The Office of Legal Services requests that the Board review the attached materials and authorize 105 KAR 1:450, Quasi-governmental employer reports on independent contractors and leased employees, and 105 KAR 1:450E, Quasi-governmental employer reports on independent contractors and leased employees, to be filed with the Regulations Compiler.

If the status of HB 668 is not clear at the time of the Board's April 12, 2022 meeting, the Office of Legal Services requests that the Board review the attached materials and authorize the alternate versions of 105 KAR 1:450, Quasi-governmental employer reports on independent contractors and

² The Governor may sign HB 668, in which case it will become law. The Governor may also veto HB 668, in which case the General Assembly may vote to override the veto or the General Assembly may decide not to override the veto. Finally, the Government may neither sign nor veto HB 668, in which case HB 668 will become law without the Governor's signature after the time for the Governor's veto ends on April 11, 2022.

leased employees, and 105 KAR 1:450E, Quasi-governmental employer reports on independent contractors and leased employees, to instead be filed with the Regulations Compiler if the changes made by HB 668 do not become law.

List of attached materials:

1. 105 KAR 1:450, Quasi-governmental employer reports on independent contractors and leased employees, with HB 668 incorporated
2. 105 KAR 1:450E, Quasi-governmental employer reports on independent contractors and leased employees, with HB 668 incorporated
3. Emergency statement for 105 KAR 1:450E (to be used regardless of whether HB 668 becomes law)
4. Form 6756, Annual Employer Certification of Non-Contributing Service Providers (to be used regardless of whether HB 668 becomes law)
5. Alternate for 105 KAR 1:450, Quasi-governmental employer reports on independent contractors and leased employees, without HB 668 incorporated
6. Alternate for 105 KAR 1:450E, Quasi-governmental employer reports on independent contractors and leased employees, without HB 668 incorporated

1 FINANCE AND ADMINISTRATION CABINET

2 Kentucky Retirement Systems

3 (New Administrative Regulation)

4 105 KAR 1:450 Quasi-governmental employer reports on independent contractors and
5 leased employees.

6 RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

7 STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of
9 Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations
10 necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705 and
11 16.505 to 16.652, and to conform to federal statutes and regulations. KRS 61.5991
12 requires certain employers that participate in the Kentucky Employees Retirement
13 System to report information to the Kentucky Public Pensions Authority on some persons
14 providing services for the participating employer as an independent contractor, a leased
15 employee, or via any other similar employment arrangement.

16 Section 1. Definitions.

17 (1) Unless otherwise defined in this section, the definitions contained in KRS
18 61.510 and the definition of “non-core services independent contractor” in KRS 61.5991
19 shall apply to this administrative regulation.

1 (2) "Complete" means all required sections of a form are filled out, the form has
2 been fully executed by an agency head, appointing authority, or authorized designee
3 (such as the reporting official), and all supporting documentation required by the form is
4 included with the form.

5 (3) "Core services independent contractor" means a person, either personally or
6 through a company or other legal entity, who provides services for a quasi-governmental
7 employer as an independent contractor, other than as a non-core services independent
8 contractor.

9 (4) "Core services leased employee" means a person who provides services for a
10 quasi-governmental employer as a leased employee through a staffing company, other
11 than as a non-core services independent contractor.

12 (5) "Direct employment" means employees reported by the quasi-governmental
13 employer in accordance with KRS 61.675 and 105 KAR 1:140.

14 (6) "File" means a form has been received at the retirement office by mail, fax,
15 secure email, or in-person delivery or via Employer Self Service on the Web site
16 maintained by the agency (if available).

17 (7) "KPPA" means the administrative staff of the Kentucky Public Pensions
18 Authority.

19 (8) "Other employment arrangement" means any written agreement between a
20 quasi-governmental employer and a third party (including, but not limited to, a person,
21 company, or other legal entity) for one (1) or more persons to provide services for the
22 quasi-governmental employer in exchange for the third party receiving monetary
23 compensation, remuneration, or profit. "Other employment arrangement" does not include

1 direct employment, any written agreement for one (1) or more persons to provide services
2 for a quasi-governmental employer as a non-core services independent contractor, or any
3 written agreement for one (1) or more persons to provide services to a quasi-
4 governmental employer if the persons would not be in a regular full-time position as
5 defined in KRS 61.510(21) if the persons were directly employed by the quasi-
6 governmental employer.

7 (9) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately
8 prior to the fiscal year in which the KPPA provides the report to the state budget director's
9 office and the Legislative Research Commission required by KRS 61.5991(3).

10 (10) "Quasi-governmental employer" means an employer participating in the
11 Kentucky Employees Retirement System that is a local or district health department
12 governed by KRS Chapter 212, state-supported university or community college, mental
13 health/mental retardation board, domestic violence shelter, rape crisis center, child
14 advocacy center, or any other employer that is eligible to voluntarily cease participation
15 in the Kentucky Employees Retirement System as provided by KRS 61.522. For the
16 purpose of this administrative regulation, "quasi-governmental employer" does not
17 include county attorneys, the Kentucky Educational Television (KET) Foundation,
18 Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association
19 (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar
20 Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional
21 Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

22 Section 2. Required form for annual reporting.

1 (1)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers
2 shall report all persons providing services as core services independent contractors, core
3 services leased employees, or through any other employment arrangement by completing
4 the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and
5 filing the Form 6756 at the retirement office on or before May 2, 2022.

6 (b) Effective with the fiscal year beginning July 1, 2022, and for each fiscal year
7 thereafter, quasi-governmental employers shall report all persons providing services as
8 core services independent contractors, core services leased employees, or through any
9 other employment arrangement by completing the Form 6756, Annual Employer
10 Certification of Non-Contributing Service Providers, and filing the Form 6756 at the
11 retirement office. For each fiscal year beginning on or after July 1, 2022, the Form 6756
12 shall be filed at the retirement office on or before April 15 of the fiscal year in which the
13 Form 6756 is required.

14 (c) If a quasi-governmental employer contracts for any additional persons to
15 provide services as core services independent contractors, core services leased
16 employees, or through any other employment arrangement after the submission of a
17 completed Form 6756, Annual Employer Certification of Non-Contributing Service
18 Providers, in accordance with paragraph (a) or paragraph (b) of this subsection, but prior
19 to the end of the fiscal year, the quasi-governmental employer shall file at the retirement
20 office a completed supplemental Form 6756 reflecting only those persons not previously
21 reported on the initial Form 6756. The supplemental Form 6756 shall be filed at the
22 retirement office on or before June 30 of the fiscal year in which the Form 6756 is required.

1 (2)(a) Persons exempted under Sections 5 and 6 shall not be required to be listed
2 on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

3 (b) Persons providing services as core services independent contractors, core
4 services leased employees, or through any other employment arrangement who would
5 not qualify as an employee in a regular full-time position pursuant to KRS 61.510(21) if
6 directly employed by the quasi-governmental employer shall not be listed on the Form
7 6756, Annual Employer Certification of Non-Contributing Service Providers.

8 (c) Persons providing services as core services independent contractors, core
9 services leased employees, or through any other employment arrangement who would
10 be in a position reported to another state-administered retirement system if directly
11 employed by the quasi-governmental employer shall not be listed on the Form 6756,
12 Annual Employer Certification of Non-Contributing Service Providers.

13 (d) 1. Quasi-governmental employers may choose to report persons providing
14 services as a non-core services independent contractor on an initial or supplemental
15 Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

16 2. All persons providing services to a quasi-governmental employer as a non-core
17 services independent contractor who are included on an initial or supplemental Form
18 6756, Annual Employer Certification of Non-Contributing Service Providers, shall be
19 treated in the same manner as all other persons listed on the Form 6756, including
20 determinations by the KPPA under Section 3 of this administrative regulation.

21 (3)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers
22 that do not file at the retirement office a completed Form 6756, Annual Employer
23 Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be

1 reported as noncompliant to the state budget director's office and the Legislative
2 Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

3 (b) For each fiscal year beginning on or after July 1, 2022, quasi-governmental
4 employers that do not file at the retirement office a completed Form 6756, Annual
5 Employer Certification of Non-Contributing Service Providers, as required by Section
6 2(1)(b) of this administrative regulation shall be reported as noncompliant to the state
7 budget director's office and the Legislative Research Commission in accordance with
8 KRS 61.5991(2)(c) and 61.5991(3)(d).

9 (4) If a quasi-governmental employer files at the retirement office an initial or
10 supplemental Form 6756, Annual Employer Certification of Non-Contributing Service
11 Providers, without the documentation required by the Form 6756, the Form 6756 shall not
12 be complete and the quasi-governmental employer shall be noncompliant in accordance
13 with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at
14 the retirement office by the appropriate deadline set forth in subsections (1), (2), and (5)
15 of this Section.

16 (5)(a) After receiving an initial or supplemental Form 6756, Annual Employer
17 Certification of Non-Contributing Service Providers, the KPPA may notify the quasi-
18 governmental employer that additional information is required.

19 (b) If additional information is required by the KPPA, the KPPA shall notify the
20 quasi-governmental employer in writing to the attention of the agency head, appointing
21 authority, or authorized designee, such as the reporting official, and shall include the
22 following in its notification:

23 1. A detailed description of the additional information required, and

1 2. A deadline by which the additional information required must be filed at the
2 retirement office, which shall not be less than fourteen (14) calendar days, but may be
3 longer than fourteen (14) calendar days.

4 (c) An initial or supplemental Form 6756, Annual Employer Certification of Non-
5 Contributing Service Providers, shall not be considered complete until all additional
6 information requested by the KPPA is on file at the retirement office.

7 (d) If a quasi-governmental employer fails to provide the additional information to
8 the KPPA by the deadline listed in the notification described in paragraph (b) of this
9 subsection or by the deadline agreed upon by the KPPA and the quasi-governmental
10 employer, then the quasi-governmental employer shall be reported as noncompliant to
11 the state budget director's office and the Legislative Research Commission in accordance
12 with KRS 61.5991(2)(c) and 61.5991(3)(d).

13 (6) During an audit of the quasi-governmental employer conducted in accordance
14 with KRS 61.675, 61.685, and 61.5991(2)(a)2., if the KPPA discovers that a quasi-
15 governmental employer has failed to list all persons on a Form 6756, Annual Employer
16 Certification of Non-Contributing Service Providers, as required by this administrative
17 regulation, then the quasi-governmental employer shall be reported as noncompliant to
18 the state budget director's office and the Legislative Research Commission in accordance
19 with KRS 61.5991(2)(c) and 61.5991(3)(d).

20 Section 3. Determination of employee or independent contractor.

21 (1) The KPPA shall have the authority to determine which persons listed on initial
22 and supplemental Form 6756s, Annual Employer Certification of Non-Contributing
23 Service Providers, should be reported as employees in regular full-time positions in

1 accordance with KRS 61.510(5) and 61.510(21) and which persons listed on the initial
2 and supplemental Form 6756s, Annual Employer Certification of Non-Contributing
3 Service Providers, are independent contractors.

4 (2) The KPPA shall apply common law factors used by the Internal Revenue
5 Service to determine whether a person listed on the initial and supplemental Form 6756s,
6 Annual Employer Certification of Non-Contributing Service Providers, is an employee of
7 the quasi-governmental employer pursuant to KRS 61.510(5) or an independent
8 contractor of the quasi-governmental employer.

9 (3)(a) If the KPPA determines that a person listed on an initial or supplemental
10 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
11 employee of the quasi-governmental employer in a regular full-time position pursuant to
12 KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall remit all
13 reports, records, contributions, and reimbursements for that person as an employee in a
14 regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the
15 calendar month after the KPPA has notified the quasi-governmental employer of its
16 determination in accordance with Section 4 of this administrative regulation.

17 (b) 1. If the KPPA determines that a person listed on an initial or supplemental
18 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
19 employee of the quasi-governmental employer in a regular full-time position pursuant to
20 KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall be required
21 to complete and file at the retirement office a Form 4225, Verification of Past Employment,
22 for that person for all periods during which the person was providing services to the quasi-
23 governmental employer.

1 2. If the KPPA determines that a person listed on an initial or supplemental Form
2 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
3 employee of the quasi-governmental employer in a regular full-time position pursuant to
4 KRS 61.510(5) and 61.510(21), then the quasi-governmental employer also shall be
5 required to submit all relevant contracts and other documentation demonstrating the
6 relationship between the quasi-governmental employer and the person for all periods
7 during which the person was providing services to the quasi-governmental employer.

8 (c) 1. After reviewing the information from the quasi-governmental employer
9 required by paragraph (b) of this subsection, if the KPPA determines that the person was
10 an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for
11 previous periods that were not reported by the quasi-governmental employer in
12 accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the person shall be
13 eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of
14 their previous employment by the quasi-governmental employer in a regular full-time
15 position.

16 2. After reviewing the information from the quasi-governmental employer required
17 by paragraph (b) of this subsection, if the KPPA determines that the person was an
18 employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for
19 previous periods that were not reported by the quasi-governmental employer in
20 accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the quasi-
21 governmental employer shall be responsible for payment of delinquent omitted employer
22 contributions in accordance with KRS 61.552(2) and 61.675(3)(b) for all periods of the

1 person's previous employment by the quasi-governmental employer in a regular full-time
2 position.

3 Section 4. Notification to employers of determination of employment relationship.

4 (1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year
5 thereafter, quasi-governmental employers shall be notified by the KPPA of the
6 determination of which persons should be reported as employees in regular full-time
7 positions in accordance with KRS 61.510(5) and 61.510(21) no later than the submission
8 of the report to the state budget director's office and the Legislative Research
9 Commission required by KRS 61.5991(3).

10 (2)(a) The KPPA shall notify the quasi-governmental employer of the determination
11 of which persons listed on an initial or supplemental Form 6756, Annual Employer
12 Certification of Non-Contributing Service Providers, should be reported as employees in
13 regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) in one (1)
14 notification letter.

15 (b) The notification shall be sent to agency head, appointing authority, or
16 authorized designee, such as the reporting official.

17 (c) The notification shall include:

18 1. The name of each person who should be reported as an employee in regular
19 full-time position in accordance with KRS 61.675 and 105 KAR 1:140,

20 2. A description of the contract or other documents pursuant to which each person
21 who should be reported as an employee in a regular full-time position are providing or
22 have provided services to the quasi-governmental employer, and

1 3. A statement that all other persons listed on the initial or supplemental Form
2 6756, Annual Employer Certification of Non-Contributing Service Providers, should not
3 be reported as employees in regular full-time positions.

4 Section 5. Contracts for professional services that have not historically been provided by
5 employees.

6 (1) A quasi-governmental employer shall not be required to report a person on the
7 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:

8 (a) The person is providing professional services as a core services independent
9 contractor, core services leased employee, or through any other employment
10 arrangement that have not been performed by direct employees of the quasi-
11 governmental employer since January 1, 2000, and

12 (b) The professional services have been performed or are being performed for the
13 quasi-governmental employer under a contract filed at the retirement office and
14 determined by the KPPA or the Kentucky Retirement Systems to represent services
15 provided by an independent contractor.

16 (2) Quasi-governmental employers may choose to report a person on the Form
17 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the
18 person is providing professional services under a contract that have not historically been
19 provided by employees.

20 Section 6. Original contracts entered prior to January 1, 2021.

21 (1) A quasi-governmental employer shall not be required to report a person on the
22 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
23 person is providing services to the quasi-governmental employer as a core services

1 independent contractor, core services leased employee, or through any other
2 employment arrangement under an original contract with the person or a company
3 entered into prior to January 1, 2021, unless one of the exceptions in subsections (2), (3),
4 or (4) of this Section applies.

5 (2) A quasi-governmental employer shall be required to report a person on the
6 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
7 person is providing services to the quasi-governmental employer as a core services
8 independent contractor, core services leased employee, or through any other
9 employment arrangement under an original contract with the person or a company
10 entered into prior to January 1, 2021 if the term of the original contract has expired and
11 the contract has been renewed or continued.

12 (3) A quasi-governmental employer shall be required to report a person on the
13 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
14 person is providing services to the quasi-governmental employer as a core services
15 independent contractor, core services leased employee, or through any other
16 employment arrangement under an original contract with the person or a company
17 entered into prior to January 1, 2021 if the contract has been modified to encompass
18 different services.

19 (4) A quasi-governmental employer shall be required to report a person on the
20 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
21 person is providing services to the quasi-governmental employer as a core services
22 independent contractor, core services leased employee, or through any other

1 employment arrangement under an original contract with a company entered into prior to
2 January 1, 2021 if the person was not included in the original contract.

3 (5) Quasi-governmental employers may choose to report a person on the Form
4 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the
5 person is providing services to the quasi-governmental employer as a core services
6 independent contractor, core services leased employee, or through any other
7 employment arrangement under an original contract with the person or a company
8 entered into prior to January 1, 2021.

9 Section 7. Report to the state budget director's office and the Legislative Research
10 Commission.

11 (1)(a) To determine the number of employees of the quasi-governmental employer
12 reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the KPPA shall
13 add together all employees in regular full-time positions reported by the quasi-
14 governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal
15 year.

16 (b) Persons listed on an initial or supplemental Form 6756, Annual Employer Certification
17 of Non-Contributing Service Providers, for the prior fiscal year who are ultimately
18 determined by the KPPA to be employees of the quasi-governmental employer in regular
19 full-time positions shall not be included in the number of employees of the quasi-
20 governmental employer for the prior fiscal year. Such persons may be included in the
21 number of employees of the quasi-governmental employer for a subsequent fiscal year if
22 the person is reported by the quasi-governmental employer in the subsequent fiscal year

1 as an employee in a regular full-time position in accordance with KRS 61.675 and 105
2 KAR 1:140.

3 (2) To determine the number of persons providing services to the quasi-governmental
4 employer who were not reported for the prior fiscal year in accordance with KRS
5 61.5991(3)(b), the KPPA shall use the total number of persons listed on initial and
6 supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service
7 Providers, for the prior fiscal year.

8 (3) The KPPA shall report the following information for each quasi-governmental
9 employer determined to have falsified data or been noncompliant in accordance with KRS
10 61.5991(3)(d):

- 11 (a) The name of the quasi-governmental employer,
- 12 (b) A description of the type of data falsified and the support the KPPA has for believing
13 the data to be falsified, if applicable, and
- 14 (c) A description of the nature of the noncompliance, if applicable.

15 Section 8. Incorporation by Reference.

16 (1) Form 6756, “Annual Employer Certification of Non-Contributing Service
17 Providers,” dated September 2021, is incorporated by reference.

18 (2) This material may be inspected, copied, or obtained, subject to applicable
19 copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort,
20 Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also
21 available on the Kentucky Public Pensions Authority’s Web site at kyret.ky.gov.

APPROVED:

JOHN CHILTON
CHIEF EXECUTIVE OFFICER
KENTUCKY RETIREMENT SYSTEMS

DATE

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 26, 2022 at 2:00 p.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, KY 40601, email Legal.Non-Advocacy@kyret.ky.gov, telephone (502) 696-8800 ext. 8647, facsimile (502) 696-8801.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Regulation number: 105 KAR 1:450
Contact person: Michael Board
Phone number: 502-696-8800 ext. 8647
Email: Legal.Non-Advocacy@kyret.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5) and 61.510(21), the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for regulated entities is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6).

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation number: 105 KAR 1:450
Contact person: Michael Board
Phone number: 502-696-8800 ext. 8647
Email: Legal.Non-Advocacy@kyret.ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). Additionally, this administrative regulation impacts the KPPA and the Kentucky Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to the KPPA to administer this administrative regulation in the first year should be minimal.

(d) How much will it cost to administer this program for subsequent years? The cost to the KPPA to administer this administrative regulation in subsequent years should be negligible.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as “employees” in accordance with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The Form 6756, "Annual Employer Certification of Non-Contributing Service Providers," dated September 2021, is the six (6) page form that certain quasi-governmental employers are required to submit annually in accordance with KRS 61.5991. KRS 61.5991 requires certain quasi-governmental employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority (KPPA) on some persons providing services for the quasi-governmental employer as an independent contractor, a leased employee, or via any other similar employment arrangement in the format, detail, and frequency determined by the KPPA.

1 FINANCE AND ADMINISTRATION CABINET

2 Kentucky Retirement Systems

3 (New Emergency Administrative Regulation)

4 105 KAR 1:450E Quasi-governmental employer reports on independent contractors and
5 leased employees.

6 RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

7 STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of
9 Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations
10 necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705 and
11 16.505 to 16.652, and to conform to federal statutes and regulations. KRS 61.5991
12 requires certain employers that participate in the Kentucky Employees Retirement
13 System to report information to the Kentucky Public Pensions Authority on some persons
14 providing services for the participating employer as an independent contractor, a leased
15 employee, or via any other similar employment arrangement.

16 Section 1. Definitions.

17 (1) Unless otherwise defined in this section, the definitions contained in KRS
18 61.510 and the definition of “non-core services independent contractor” in KRS 61.5991
19 shall apply to this administrative regulation.

1 (2) "Complete" means all required sections of a form are filled out, the form has
2 been fully executed by an agency head, appointing authority, or authorized designee
3 (such as the reporting official), and all supporting documentation required by the form is
4 included with the form.

5 (3) "Core services independent contractor" means a person, either personally or
6 through a company or other legal entity, who provides services for a quasi-governmental
7 employer as an independent contractor, other than as a non-core services independent
8 contractor.

9 (4) "Core services leased employee" means a person who provides services for a
10 quasi-governmental employer as a leased employee through a staffing company, other
11 than as a non-core services independent contractor.

12 (5) "Direct employment" means employees reported by the quasi-governmental
13 employer in accordance with KRS 61.675 and 105 KAR 1:140.

14 (6) "File" means a form has been received at the retirement office by mail, fax,
15 secure email, or in-person delivery or via Employer Self Service on the Web site
16 maintained by the agency (if available).

17 (7) "KPPA" means the administrative staff of the Kentucky Public Pensions
18 Authority.

19 (8) "Other employment arrangement" means any written agreement between a
20 quasi-governmental employer and a third party (including, but not limited to, a person,
21 company, or other legal entity) for one (1) or more persons to provide services for the
22 quasi-governmental employer in exchange for the third party receiving monetary
23 compensation, remuneration, or profit. "Other employment arrangement" does not include

1 direct employment, any written agreement for one (1) or more persons to provide services
2 for a quasi-governmental employer as a non-core services independent contractor, or any
3 written agreement for one (1) or more persons to provide services to a quasi-
4 governmental employer if the persons would not be in a regular full-time position as
5 defined in KRS 61.510(21) if the persons were directly employed by the quasi-
6 governmental employer.

7 (9) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately
8 prior to the fiscal year in which the KPPA provides the report to the state budget director's
9 office and the Legislative Research Commission required by KRS 61.5991(3).

10 (10) "Quasi-governmental employer" means an employer participating in the
11 Kentucky Employees Retirement System that is a local or district health department
12 governed by KRS Chapter 212, state-supported university or community college, mental
13 health/mental retardation board, domestic violence shelter, rape crisis center, child
14 advocacy center, or any other employer that is eligible to voluntarily cease participation
15 in the Kentucky Employees Retirement System as provided by KRS 61.522. For the
16 purpose of this administrative regulation, "quasi-governmental employer" does not
17 include county attorneys, the Kentucky Educational Television (KET) Foundation,
18 Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association
19 (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar
20 Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional
21 Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

22 Section 2. Required form for annual reporting.

1 (1)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers
2 shall report all persons providing services as core services independent contractors, core
3 services leased employees, or through any other employment arrangement by completing
4 the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and
5 filing the Form 6756 at the retirement office on or before May 2, 2022.

6 (b) Effective with the fiscal year beginning July 1, 2022, and for each fiscal year
7 thereafter, quasi-governmental employers shall report all persons providing services as
8 core services independent contractors, core services leased employees, or through any
9 other employment arrangement by completing the Form 6756, Annual Employer
10 Certification of Non-Contributing Service Providers, and filing the Form 6756 at the
11 retirement office. For each fiscal year beginning on or after July 1, 2022, the Form 6756
12 shall be filed at the retirement office on or before April 15 of the fiscal year in which the
13 Form 6756 is required.

14 (c) If a quasi-governmental employer contracts for any additional persons to
15 provide services as core services independent contractors, core services leased
16 employees, or through any other employment arrangement after the submission of a
17 completed Form 6756, Annual Employer Certification of Non-Contributing Service
18 Providers, in accordance with paragraph (a) or paragraph (b) of this subsection, but prior
19 to the end of the fiscal year, the quasi-governmental employer shall file at the retirement
20 office a completed supplemental Form 6756 reflecting only those persons not previously
21 reported on the initial Form 6756. The supplemental Form 6756 shall be filed at the
22 retirement office on or before June 30 of the fiscal year in which the Form 6756 is required.

1 (2)(a) Persons exempted under Sections 5 and 6 shall not be required to be listed
2 on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

3 (b) Persons providing services as core services independent contractors, core
4 services leased employees, or through any other employment arrangement who would
5 not qualify as an employee in a regular full-time position pursuant to KRS 61.510(21) if
6 directly employed by the quasi-governmental employer shall not be listed on the Form
7 6756, Annual Employer Certification of Non-Contributing Service Providers.

8 (c) Persons providing services as core services independent contractors, core
9 services leased employees, or through any other employment arrangement who would
10 be in a position reported to another state-administered retirement system if directly
11 employed by the quasi-governmental employer shall not be listed on the Form 6756,
12 Annual Employer Certification of Non-Contributing Service Providers.

13 (d) 1. Quasi-governmental employers may choose to report persons providing
14 services as a non-core services independent contractor on an initial or supplemental
15 Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

16 2. All persons providing services to a quasi-governmental employer as a non-core
17 services independent contractor who are included on an initial or supplemental Form
18 6756, Annual Employer Certification of Non-Contributing Service Providers, shall be
19 treated in the same manner as all other persons listed on the Form 6756, including
20 determinations by the KPPA under Section 3 of this administrative regulation.

21 (3)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers
22 that do not file at the retirement office a completed Form 6756, Annual Employer
23 Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be

1 reported as noncompliant to the state budget director's office and the Legislative
2 Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

3 (b) For each fiscal year beginning on or after July 1, 2022, quasi-governmental
4 employers that do not file at the retirement office a completed Form 6756, Annual
5 Employer Certification of Non-Contributing Service Providers, as required by Section
6 2(1)(b) of this administrative regulation shall be reported as noncompliant to the state
7 budget director's office and the Legislative Research Commission in accordance with
8 KRS 61.5991(2)(c) and 61.5991(3)(d).

9 (4) If a quasi-governmental employer files at the retirement office an initial or
10 supplemental Form 6756, Annual Employer Certification of Non-Contributing Service
11 Providers, without the documentation required by the Form 6756, the Form 6756 shall not
12 be complete and the quasi-governmental employer shall be noncompliant in accordance
13 with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at
14 the retirement office by the appropriate deadline set forth in subsections (1), (2), and (5)
15 of this Section.

16 (5)(a) After receiving an initial or supplemental Form 6756, Annual Employer
17 Certification of Non-Contributing Service Providers, the KPPA may notify the quasi-
18 governmental employer that additional information is required.

19 (b) If additional information is required by the KPPA, the KPPA shall notify the
20 quasi-governmental employer in writing to the attention of the agency head, appointing
21 authority, or authorized designee, such as the reporting official, and shall include the
22 following in its notification:

- 23 1. A detailed description of the additional information required, and

1 2. A deadline by which the additional information required must be filed at the
2 retirement office, which shall not be less than fourteen (14) calendar days, but may be
3 longer than fourteen (14) calendar days.

4 (c) An initial or supplemental Form 6756, Annual Employer Certification of Non-
5 Contributing Service Providers, shall not be considered complete until all additional
6 information requested by the KPPA is on file at the retirement office.

7 (d) If a quasi-governmental employer fails to provide the additional information to
8 the KPPA by the deadline listed in the notification described in paragraph (b) of this
9 subsection or by the deadline agreed upon by the KPPA and the quasi-governmental
10 employer, then the quasi-governmental employer shall be reported as noncompliant to
11 the state budget director's office and the Legislative Research Commission in accordance
12 with KRS 61.5991(2)(c) and 61.5991(3)(d).

13 (6) During an audit of the quasi-governmental employer conducted in accordance
14 with KRS 61.675, 61.685, and 61.5991(2)(a)2., if the KPPA discovers that a quasi-
15 governmental employer has failed to list all persons on a Form 6756, Annual Employer
16 Certification of Non-Contributing Service Providers, as required by this administrative
17 regulation, then the quasi-governmental employer shall be reported as noncompliant to
18 the state budget director's office and the Legislative Research Commission in accordance
19 with KRS 61.5991(2)(c) and 61.5991(3)(d).

20 Section 3. Determination of employee or independent contractor.

21 (1) The KPPA shall have the authority to determine which persons listed on initial
22 and supplemental Form 6756s, Annual Employer Certification of Non-Contributing
23 Service Providers, should be reported as employees in regular full-time positions in

1 accordance with KRS 61.510(5) and 61.510(21) and which persons listed on the initial
2 and supplemental Form 6756s, Annual Employer Certification of Non-Contributing
3 Service Providers, are independent contractors.

4 (2) The KPPA shall apply common law factors used by the Internal Revenue
5 Service to determine whether a person listed on the initial and supplemental Form 6756s,
6 Annual Employer Certification of Non-Contributing Service Providers, is an employee of
7 the quasi-governmental employer pursuant to KRS 61.510(5) or an independent
8 contractor of the quasi-governmental employer.

9 (3)(a) If the KPPA determines that a person listed on an initial or supplemental
10 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
11 employee of the quasi-governmental employer in a regular full-time position pursuant to
12 KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall remit all
13 reports, records, contributions, and reimbursements for that person as an employee in a
14 regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the
15 calendar month after the KPPA has notified the quasi-governmental employer of its
16 determination in accordance with Section 4 of this administrative regulation.

17 (b) 1. If the KPPA determines that a person listed on an initial or supplemental
18 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
19 employee of the quasi-governmental employer in a regular full-time position pursuant to
20 KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall be required
21 to complete and file at the retirement office a Form 4225, Verification of Past Employment,
22 for that person for all periods during which the person was providing services to the quasi-
23 governmental employer.

1 2. If the KPPA determines that a person listed on an initial or supplemental Form
2 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
3 employee of the quasi-governmental employer in a regular full-time position pursuant to
4 KRS 61.510(5) and 61.510(21), then the quasi-governmental employer also shall be
5 required to submit all relevant contracts and other documentation demonstrating the
6 relationship between the quasi-governmental employer and the person for all periods
7 during which the person was providing services to the quasi-governmental employer.

8 (c) 1. After reviewing the information from the quasi-governmental employer
9 required by paragraph (b) of this subsection, if the KPPA determines that the person was
10 an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for
11 previous periods that were not reported by the quasi-governmental employer in
12 accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the person shall be
13 eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of
14 their previous employment by the quasi-governmental employer in a regular full-time
15 position.

16 2. After reviewing the information from the quasi-governmental employer required
17 by paragraph (b) of this subsection, if the KPPA determines that the person was an
18 employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for
19 previous periods that were not reported by the quasi-governmental employer in
20 accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the quasi-
21 governmental employer shall be responsible for payment of delinquent omitted employer
22 contributions in accordance with KRS 61.552(2) and 61.675(3)(b) for all periods of the

1 person's previous employment by the quasi-governmental employer in a regular full-time
2 position.

3 Section 4. Notification to employers of determination of employment relationship.

4 (1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year
5 thereafter, quasi-governmental employers shall be notified by the KPPA of the
6 determination of which persons should be reported as employees in regular full-time
7 positions in accordance with KRS 61.510(5) and 61.510(21) no later than the submission
8 of the report to the state budget director's office and the Legislative Research
9 Commission required by KRS 61.5991(3).

10 (2)(a) The KPPA shall notify the quasi-governmental employer of the determination
11 of which persons listed on an initial or supplemental Form 6756, Annual Employer
12 Certification of Non-Contributing Service Providers, should be reported as employees in
13 regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) in one (1)
14 notification letter.

15 (b) The notification shall be sent to agency head, appointing authority, or
16 authorized designee, such as the reporting official.

17 (c) The notification shall include:

18 1. The name of each person who should be reported as an employee in regular
19 full-time position in accordance with KRS 61.675 and 105 KAR 1:140,

20 2. A description of the contract or other documents pursuant to which each person
21 who should be reported as an employee in a regular full-time position are providing or
22 have provided services to the quasi-governmental employer, and

1 3. A statement that all other persons listed on the initial or supplemental Form
2 6756, Annual Employer Certification of Non-Contributing Service Providers, should not
3 be reported as employees in regular full-time positions.

4 Section 5. Contracts for professional services that have not historically been provided by
5 employees.

6 (1) A quasi-governmental employer shall not be required to report a person on the
7 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:

8 (a) The person is providing professional services as a core services independent
9 contractor, core services leased employee, or through any other employment
10 arrangement that have not been performed by direct employees of the quasi-
11 governmental employer since January 1, 2000, and

12 (b) The professional services have been performed or are being performed for the
13 quasi-governmental employer under a contract filed at the retirement office and
14 determined by the KPPA or the Kentucky Retirement Systems to represent services
15 provided by an independent contractor.

16 (2) Quasi-governmental employers may choose to report a person on the Form
17 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the
18 person is providing professional services under a contract that have not historically been
19 provided by employees.

20 Section 6. Original contracts entered prior to January 1, 2021.

21 (1) A quasi-governmental employer shall not be required to report a person on the
22 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
23 person is providing services to the quasi-governmental employer as a core services

1 independent contractor, core services leased employee, or through any other
2 employment arrangement under an original contract with the person or a company
3 entered into prior to January 1, 2021, unless one of the exceptions in subsections (2), (3),
4 or (4) of this Section applies.

5 (2) A quasi-governmental employer shall be required to report a person on the
6 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
7 person is providing services to the quasi-governmental employer as a core services
8 independent contractor, core services leased employee, or through any other
9 employment arrangement under an original contract with the person or a company
10 entered into prior to January 1, 2021 if the term of the original contract has expired and
11 the contract has been renewed or continued.

12 (3) A quasi-governmental employer shall be required to report a person on the
13 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
14 person is providing services to the quasi-governmental employer as a core services
15 independent contractor, core services leased employee, or through any other
16 employment arrangement under an original contract with the person or a company
17 entered into prior to January 1, 2021 if the contract has been modified to encompass
18 different services.

19 (4) A quasi-governmental employer shall be required to report a person on the
20 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
21 person is providing services to the quasi-governmental employer as a core services
22 independent contractor, core services leased employee, or through any other

1 employment arrangement under an original contract with a company entered into prior to
2 January 1, 2021 if the person was not included in the original contract.

3 (5) Quasi-governmental employers may choose to report a person on the Form
4 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the
5 person is providing services to the quasi-governmental employer as a core services
6 independent contractor, core services leased employee, or through any other
7 employment arrangement under an original contract with the person or a company
8 entered into prior to January 1, 2021.

9 Section 7. Report to the state budget director's office and the Legislative Research
10 Commission.

11 (1)(a) To determine the number of employees of the quasi-governmental employer
12 reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the KPPA shall
13 add together all employees in regular full-time positions reported by the quasi-
14 governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal
15 year.

16 (b) Persons listed on an initial or supplemental Form 6756, Annual Employer Certification
17 of Non-Contributing Service Providers, for the prior fiscal year who are ultimately
18 determined by the KPPA to be employees of the quasi-governmental employer in regular
19 full-time positions shall not be included in the number of employees of the quasi-
20 governmental employer for the prior fiscal year. Such persons may be included in the
21 number of employees of the quasi-governmental employer for a subsequent fiscal year if
22 the person is reported by the quasi-governmental employer in the subsequent fiscal year

1 as an employee in a regular full-time position in accordance with KRS 61.675 and 105
2 KAR 1:140.

3 (2) To determine the number of persons providing services to the quasi-governmental
4 employer who were not reported for the prior fiscal year in accordance with KRS
5 61.5991(3)(b), the KPPA shall use the total number of persons listed on initial and
6 supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service
7 Providers, for the prior fiscal year.

8 (3) The KPPA shall report the following information for each quasi-governmental
9 employer determined to have falsified data or been noncompliant in accordance with KRS
10 61.5991(3)(d):

- 11 (a) The name of the quasi-governmental employer,
- 12 (b) A description of the type of data falsified and the support the KPPA has for believing
13 the data to be falsified, if applicable, and
- 14 (c) A description of the nature of the noncompliance, if applicable.

15 Section 8. Incorporation by Reference.

16 (1) Form 6756, “Annual Employer Certification of Non-Contributing Service
17 Providers,” dated September 2021, is incorporated by reference.

18 (2) This material may be inspected, copied, or obtained, subject to applicable
19 copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort,
20 Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also
21 available on the Kentucky Public Pensions Authority’s Web site at kyret.ky.gov.

APPROVED:

JOHN CHILTON
CHIEF EXECUTIVE OFFICER
KENTUCKY RETIREMENT SYSTEMS

DATE

PUBLIC HEARING: A public hearing on this emergency administrative regulation shall be held on Tuesday, June 28, 2022 at 10:00 a.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Written comments shall be accepted until June 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, KY 40601, email Legal.Non-Advocacy@kyret.ky.gov, telephone (502) 696-8800 ext. 8647, facsimile (502) 696-8801.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Regulation number: 105 KAR 1:450E
Contact person: Michael Board
Phone number: 502-696-8800 ext. 8647
Email: Legal.Non-Advocacy@kyret.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5) and 61.510(21), the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for regulated entities is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6).

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation number: 105 KAR 1:450E
Contact person: Michael Board
Phone number: 502-696-8800 ext. 8647
Email: Legal.Non-Advocacy@kyret.ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). Additionally, this administrative regulation impacts the KPPA and the Kentucky Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to the KPPA to administer this administrative regulation in the first year should be minimal.

(d) How much will it cost to administer this program for subsequent years? The cost to the KPPA to administer this administrative regulation in subsequent years should be negligible.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as “employees” in accordance with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The Form 6756, "Annual Employer Certification of Non-Contributing Service Providers," dated September 2021, is the six (6) page form that certain quasi-governmental employers are required to submit annually in accordance with KRS 61.5991. KRS 61.5991 requires certain quasi-governmental employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority (KPPA) on some persons providing services for the quasi-governmental employer as an independent contractor, a leased employee, or via any other similar employment arrangement in the format, detail, and frequency determined by the KPPA.

STATEMENT OF EMERGENCY
105 KAR 1:450E

Pursuant to KRS 13A.190(1)(a)3., this emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. KRS 61.5991(3) requires the Kentucky Public Pensions Authority (KPPA) to provide a report to the state budget director's office and the Legislative Research Commission within sixty (60) days of the end of the fiscal year beginning on July 1, 2021. In order to comply with the statutory deadline for this report, the KPPA must receive the information mandated by KRS 61.5991 from approximately 100 quasi-governmental employers well in advance of the statutory deadline for the report.

This emergency administrative regulation will be replaced by an ordinary administrative regulation because the information reported by the quasi-governmental employers and the report provided by the KPPA to the state budget director's office and the Legislative Research Commission are recurring every subsequent fiscal year after the fiscal year beginning on July 1, 2021. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, GOVERNOR
COMMONWEALTH OF KENTUCKY

DATE: _____

JOHN CHILTON
CHIEF EXECUTIVE OFFICER
KENTUCKY RETIREMENT SYSTEMS

DATE: _____

1 FINANCE AND ADMINISTRATION CABINET

2 Kentucky Retirement Systems

3 (Emergency Amendment)

4 105 KAR 1:390E. Employment after retirement.

5 RELATES TO: KRS 16.505(15), 61.510, 61.590, 61.637, 78.510(3), (18), 26 U.S.C.
6 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

7 STATUTORY AUTHORITY: KRS 61.645(9)(e) [~~61.645(9)(g)~~], 61.637(18)

8 NECESSITY, FUNCTION, AND CONFORMITY: 61.645(9)(e) [~~61.645(9)(g)~~] requires
9 the Board of Trustees of Kentucky Retirement Systems to promulgate administrative
10 regulations necessary or proper in order to carry out the purposes and provisions of KRS
11 61.510 [~~61.515~~] to 61.705, 16.505 [~~16.510~~] to 16.652, and 78.510 [~~78.520~~] to 78.852.
12 KRS 61.637(18) requires Kentucky Retirement Systems to promulgate regulations to
13 implement the requirements of KRS 61.637. This administrative regulation concerns the
14 administration of KRS 61.637 in conjunction with federal law regarding bona fide
15 separation from service and changes in employment relationship if a retired member
16 returns to employment with a Kentucky Retirement Systems participating employer, [~~after~~
17 ~~retirement~~] 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its
18 statutes and administrative regulations (plan documents) how it shall administer its plan
19 in accordance with federal law in order to maintain the tax qualified [~~tax-qualified~~] status
20 of the plan. This administrative regulation is necessary to maintain the tax qualified status
21 of the Kentucky Employees Retirement System, the County Employees Retirement

1 System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply
2 with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

3

4 Section 1. Definitions. (1) "Initial retirement date" means the member's effective
5 retirement date as described ~~defined~~ in KRS 61.590(5).

6 (2) "Participating employer" means any ~~an~~ employer that participates in one of
7 the systems administered by Kentucky Retirement Systems.

8 (3) "Participating position", for the purpose of this administrative regulation, means
9 a regular full-time position as defined in KRS 61.510(21) and 78.510(21) or a regular full-
10 time officer position as defined in KRS 16.505(22).

11 (4) [(3)] "Reemployment", for purposes of this administrative regulation [KRS
12 61.637], means the retired member's first date of employment with a participating
13 employer [~~retiree's first membership date~~] following his or her initial retirement date. [~~as~~
14 long as the retired member has not had a cessation of membership as provided in KRS
15 61.535 and 61.550.]

16

17 Section 2. Form 6000 certification. (1) In order to retire with Kentucky Retirement
18 Systems, an eligible member shall submit a Form 6000, Notification of Retirement. The
19 Form 6000, Notification of Retirement, shall comply with the requirements of KRS 61.590
20 and 105 KAR 1:200.

21 (2) Kentucky Retirement Systems shall not process a Form 6000, Notification of
22 Retirement, until the member certifies on the Form 6000 that there is no prearranged
23 agreement for reemployment with a participating employer after the member's initial

1 retirement date. [~~"Reemployed", for purposes of this administrative regulation, shall not~~
2 ~~include a transfer to another position with the same employer.]~~

3

4 Section 3. Employment after retirement. (1) A retired member who is reemployed
5 with a participating employer in any position shall have:

6 (a) A bona fide separation from service as provided in subsection (2) of this section;
7 and

8 (b) A break in service as provided in subsection (3) of this section.

9 (2)(a) "Bona fide separation from service" as provided in this section shall include
10 a cessation of the employment relationship between the member and the member's
11 employer without a prearranged agreement when the member retires that he or she will
12 return to work for any participating employer in any capacity.

13 (b) "Prearranged agreement" as provided in this section shall not include
14 reemployment accepted more than twelve (12) calendar months after the member's initial
15 retirement date.

16 (c) An elected official's retirement shall be voided due to the existence of a
17 prearranged agreement if, within twelve (12) months of initial retirement, the official is
18 reelected and takes office in the same position from which the official retired.

19 (3) "Break in service" as provided in this section shall require that:

20 (a) A member who retired from a hazardous position shall have a one (1) calendar
21 month break in service before returning to work with any participating employer in a
22 hazardous participating position.

1 (b) Except as provided in (3)(a) of this section, a member who retired from a
2 hazardous or nonhazardous position shall have a three (3) calendar month break in
3 service before returning to work with any participating employer.

4 (4)(a) If a retired member seeks reemployment with a participating employer within
5 twelve (12) months of his or her initial retirement date, the participating employer shall
6 certify that there was no prearranged agreement. The participating employer shall file at
7 the retirement office a completed Form 6751, Employer Certification Regarding
8 Reemployment.

9 (b) The retired member shall file at the retirement office a completed Form 6754,
10 Member Reemployment Certification.

11 (5) Kentucky Retirement Systems shall issue a final determination to the retired
12 member no later than thirty (30) days after receipt of all required forms and additional
13 requested information. If Kentucky Retirement Systems determines that the retired
14 member failed to have a bona fide separation from service or a break in service and
15 returned to work with any participating employer, the retired member's retirement shall be
16 voided and he or she shall repay all retirement allowances, dependent child payments,
17 and health plan premiums paid by the Kentucky Retirement Systems. [(1) Returning to
18 work in a participating position. A retired member who is reemployed in a participating
19 position shall have:

20 (a) A bona fide separation from service as provided in subsection (2) of this section;

21 **and**

22 (b) A break in service as provided in subsection (3) of this section.

1 ~~(2) "Bona fide separation from service" as provided in this section shall include a~~
2 ~~cessation of the employment relationship between the member and the member's~~
3 ~~employer without a prearranged agreement when the member retires that the member~~
4 ~~will return to work for any participating employer in any capacity. "Bona fide separation~~
5 ~~from service" shall also exclude a prearranged agreement to return to work for any~~
6 ~~participating employer as a leased employee.~~

7 ~~(3) "Break in service" as provided in this section shall require that:~~

8 ~~(a) A member who retired from a hazardous position shall have a one (1) calendar~~
9 ~~month break in service before returning to work with a participating employer in a~~
10 ~~hazardous participating position.~~

11 ~~(b) A member who retired from a nonhazardous position shall have a three (3)~~
12 ~~calendar month break in service before returning to work with a participating employer in~~
13 ~~a hazardous participating position.~~

14 ~~(c) A member who retired from a hazardous or a non-hazardous position shall have~~
15 ~~a three (3) calendar month break in service before returning to work with a participating~~
16 ~~employer in a non-hazardous participating position.~~

17 ~~(4) If the member does not have a bona fide separation from service and a break~~
18 ~~in service and returns to work with any participating employer, the retired member's~~
19 ~~retirement shall be voided. The member shall repay all retirement allowances, dependent~~
20 ~~child payments, and health plan premiums paid by the Kentucky Retirement Systems.]~~

21
22 Section 4. Independent Contractors and Leased Employees. (1)(a) Both the
23 retired member and the participating employer shall file written notice at the retirement

1 office if, within twelve (12) months of the retired member's initial retirement date, the
2 retired member provides services to a participating employer as an independent
3 contractor or as a leased employee.

4 (b) The participating employer shall file at the retirement office a Form 6752,
5 Employer Certification of Independent Contractor/Leased Employee.

6 (c) The retired member shall file at the retirement office a completed Form 6754,
7 Member Reemployment Certification as well as a complete copy of any contract under
8 which services are provided by the retired member to the participating employer.

9 (2) Kentucky Retirement Systems shall issue a final determination to the retired
10 member no later than thirty (30) days after receipt of all required forms and requested
11 information. If Kentucky Retirement Systems determines that the retired member is an
12 employee of the participating employer, rather than an independent contractor or leased
13 employee through a leasing company, staffing agency, or other entity, the retired member
14 shall be subject to the provisions of Section 3 of this administrative regulation and shall
15 be required to have a "bona fide separation from service" and "break in service." [(1)
16 Returning to work for a participating employer in a nonparticipating position. A retired
17 member who is employed by a participating employer in a non-participating position shall
18 have: (a) A bona fide separation from service as provided in subsection (2) of this section;
19 and (b) A break in service as provided in subsection (3) of this section. (2) "Bona fide
20 separation from service" as provided in this section means a cessation of the employment
21 relationship between the member and the member's last employer without a prearranged
22 agreement when the member retires that the member will return to work for the member's
23 last employer in any capacity. "Bona fide separation from service" shall also exclude a

1 ~~prearranged agreement to return to work for the member's last employer as a leased~~
2 ~~employee. (a) For purposes of this section, all participating employers in the Kentucky~~
3 ~~Employees Retirement System and the State Police Retirement System shall be treated~~
4 ~~as the same participating employer. (b) For purposes of this section, County Employees~~
5 ~~Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated~~
6 ~~as a separate employer. (3) "Break in service" as provided in this section shall require~~
7 ~~that a member who retired from a hazardous or nonhazardous position and becomes~~
8 ~~employed in a nonparticipating hazardous or nonhazardous position shall have a three~~
9 ~~(3) calendar month break in service before returning to work with a participating~~
10 ~~employer.]~~

11
12 Section 5. Volunteers. (1)(a) Both the retired member and participating employer
13 shall file written notice at the retirement office if, within twelve (12) months of the retired
14 member's initial retirement date, the retired member seeks to volunteer with a
15 participating employer.

16 (b) The participating employer shall file at the retirement office a completed Form
17 6753, Employer Certification of Volunteer.

18 (c) The retired member shall file at the retirement office a completed Form 6754,
19 Member Reemployment Certification.

20 (2) Kentucky Retirement Systems shall issue a final determination to the retired
21 member no later than thirty (30) days after receipt of all required forms and requested
22 information. If Kentucky Retirement Systems determines that the retired member is an
23 employee of the participating employer, rather than a volunteer, the retired member shall

1 be subject to the provisions of Section 3 of this administrative regulation and shall be
2 required to have a “bona fide separation from service” and “break in service.” ~~{(1)}~~
3 ~~Returning to work with the same employer in a position required to participate in a~~
4 ~~retirement system. A retired member who is reemployed in a position required to~~
5 ~~participate in a different retirement system not administered by Kentucky Retirement~~
6 ~~Systems shall have: (a) A bona fide separation from service as provided in subsection~~
7 ~~(2) of this section; and (b) A break in service as provided in subsection (3) of this section.~~
8 ~~(2) "Bona fide separation from service" as provided in this section means a cessation of~~
9 ~~the employment relationship between the member and a participating employer without~~
10 ~~a prearranged agreement when the member retires that the member will return to work~~
11 ~~for the same employer in any capacity. "Bona fide separation from service" shall also~~
12 ~~exclude a prearranged agreement to return to work for the same employer as a leased~~
13 ~~employee. (a) For purposes of this section, all participating employers in the Kentucky~~
14 ~~Employees Retirement System and the State Police Retirement System shall be treated~~
15 ~~as the same participating employer. (b) For purposes of this section, County Employees~~
16 ~~Retirement System agencies, each county, as defined by KRS 78.510(3), shall be treated~~
17 ~~as a separate employer. (3) "Break in service" as provided in this section shall require~~
18 ~~that: (a) A member who retired from a hazardous position and becomes employed by the~~
19 ~~same employer in a hazardous position required to participate in a retirement system not~~
20 ~~administered by Kentucky Retirement Systems, shall have a one (1) calendar month~~
21 ~~break in service before returning to work with a participating employer. (b) A member~~
22 ~~who retired from a nonhazardous position and becomes employed by the same employer~~
23 ~~in a hazardous position required to participate in a retirement system not administered by~~

~~Kentucky Retirement Systems, shall have a three (3) calendar month break in service before returning to work with a participating employer. (c) A member who retired from a nonhazardous position and becomes employed by the same employer in a participating non-hazardous or hazardous position in a retirement system not administered by Kentucky Retirement Systems, shall have a three (3) calendar month break in service before returning to work with a participating employer. (4) If the member does not have a bona fide separation from service and a break in service and returns to work with the same employer in a position required to participate in a retirement system not administered by Kentucky Retirement Systems, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.]~~

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement," June 2019;

(b) [Member and] Form 6751, "Employer Certification Regarding Reemployment," [Form 6751] June 2019; [May 2009, is incorporated by reference.]

(c) Form 6752, "Employer Certification of Independent Contractor/Leased Employee," June 2019; and

(d) Form 6753, "Employer Certification of Volunteer," June 2019.

(e) Form 6754, "Member Reemployment Certification," June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, ~~[Perimeter Park West,]~~ 1260

1 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30
2 p.m. [~~(1) Returning to work for a different participating employer in a nonparticipating~~
3 ~~position. A retired member who becomes employed in a nonparticipating position shall~~
4 ~~not be required to have a bona fide separation from service if the retired member becomes~~
5 ~~employed with a different participating employer than the retired member's employer prior~~
6 ~~to retirement. (2) A retired member who becomes employed in a non-participating~~
7 ~~position shall have a three (3) calendar month break in service. (3) For purposes of this~~
8 ~~section, all participating employers in the Kentucky Employees Retirement System and~~
9 ~~the State Police Retirement System shall be treated as the same participating employer.~~
10 ~~(4) For purposes of this section, for County Employees Retirement System agencies,~~
11 ~~each county, as defined by KRS 78.510(3), shall be treated as a separate employer.]~~

12 ~~Section 7. (1) Requirements before employment after retirement. The retired~~
13 ~~member and the reemploying employer shall certify that when the member retired, there~~
14 ~~was no prearranged agreement to employ the retired member after the member's~~
15 ~~retirement. The retired member and reemploying employer shall complete and file at the~~
16 ~~retirement office the Form 6751, Retired Member and Employer Certification Regarding~~
17 ~~Reemployment. (2) The retired member shall report in writing to Kentucky Retirement~~
18 ~~Systems future employment in any capacity with any participating employer.~~

19 ~~Section 8. Status as an Employee. (1) A retired member and a Kentucky~~
20 ~~Retirement Systems participating employer shall file written notice at the retirement office~~
21 ~~if the retired member has accepted employment with the participating employer under a~~
22 ~~personal services contract. (2) If Kentucky Retirement Systems determines that the~~
23 ~~retired member is an employee of the participating employer, rather than an independent~~

1 ~~contractor, the retired member shall be subject to Sections 1 through 5 of this~~
2 ~~administrative regulation. (3) Kentucky Retirement Systems shall take appropriate action~~
3 ~~to determine the individual's status as an independent contractor or employee.~~

4 ~~Section 9. Leased Employees. (1) A retired member and a participating employer~~
5 ~~shall file at the retirement office written notice if the retired member is performing work for~~
6 ~~the participating employer through a private leasing company, a temporary staffing~~
7 ~~agency, or any other company. (2) If the retirement system determines that the retired~~
8 ~~member is an employee of the participating employer, rather than the private leasing~~
9 ~~company, temporary staffing agency, or other company, the retired member shall be~~
10 ~~subject to the provisions of Sections 1 through 5 of this administrative regulation.~~

11 ~~Section 10. Incorporation by Reference. (1) "Member and Employer Certification~~
12 ~~Regarding Reemployment", Form 6751, May 2009, is incorporated by reference. (2) This~~
13 ~~material may be inspected, copied, or obtained, subject to applicable copyright law, at the~~
14 ~~Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort,~~
15 ~~Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. (34 Ky.R. 826; 1388;~~
16 ~~eff. 14-2008; 35 Ky.R. 975; 1723; eff. 2-6-2009; 36 Ky.R. 141; eff. 10-2-2009.)]~~

APPROVED:

DAVID L. EAGER,
EXECUTIVE DIRECTOR
KENTUCKY RETIREMENT SYSTEMS

DATE

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Regulation number: 105 KAR 1:390E
Contact person: Mark C. Blackwell
Phone number: 502-696-8800 ext. 8645
Email: mark.blackwell@kyret.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the procedures and requirements for retired members and participating employers prior to the reemployment of a retiree with a participating employer in Kentucky Retirement Systems in accordance with KRS 61.637. The regulation outlines certification and notification requirements of both retirees and participating employers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation will assist in the effective administration of the statutes by implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by outlining the processes and procedures for administration of Kentucky Retirement Systems' retired reemployed requirements while implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by outlining the

processes and procedures for administration of Kentucky Retirement Systems' retired reemployed requirements while implementing the twelve (12) month threshold promulgated by 2019 House Bill 419 as well as further defining the requirements for elected officials pursuant to 2019 House Bill 55.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Retirement Systems, retirees seeking reemployment with a participating employer within twelve (12) months of their initial retirement date, and employers participating in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Retirees seeking reemployment with a participating employer shall have a bona fide separation from service and break in service. Upon retirement, retired members shall certify that they had no prearranged agreement to return to employment with a participating employer in Kentucky Retirement Systems. Upon hiring a retiree within twelve (12) months of the retiree's initial retirement date, a participating employer shall certify that there was no prearranged agreement to hire the retiree.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Aside from some limited exceptions, the employer shall remit employer contributions on all creditable compensation earned by the employee during the period of reemployment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1. Moreover, compliance with this regulation will allow retired members to return to work with participating employers without the voiding of their retirement. Participating employers will be permitted to hire retired members.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Kentucky Retirement Systems is already administering KRS 61.637 and no additional cost will arise from implementation of 2019 HB 419 and 55.

(b) On a continuing basis: The employer will be required to remit employer contributions on most retired members pursuant to KRS 61.637(17).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All employers seeking to hire retired members are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation number: 105 KAR 1:390E
Contact person: Mark C. Blackwell
Phone number: 502-696-8800 ext. 8645
Email: mark.blackwell@kyret.ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and all participating employers in the Kentucky Employees Retirement System, State Police Retirement System, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.637, 26 U.S.C. 401(a).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The employer will have to remit employer contributions on certain employees.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.637 is already being administered by Kentucky Retirement Systems. Moreover, administrative costs should be reduced by the twelve (12) month threshold for review established by 2019 House Bill 419.

(d) How much will it cost to administer this program for subsequent years? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.637 is already being administered by Kentucky Retirement Systems. Moreover, administrative costs should be reduced by twelve (12) month threshold for review established by 2019 House Bill 419.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

SUMMARY OF
MATERIAL INCORPORATED BY REFERENCE

The material incorporated by reference consists of the following forms:

(a) Form 6000, "Notification of Retirement," June 2019. This is the form used by members to initiate the retirement process. This form was amended pursuant to KRS 61.590(1)(b), which was added in 2019 HB 419, to require a member to certify that no prearranged agreement existed to return to employment with a participating employer prior to receiving retirement benefits. Moreover, the amendment notes that the member's duty to notify Kentucky Retirements Systems of reemployment is limited to twelve (12) months after the member's initial retirement date.

(b) Form 6751, "Employer Certification Regarding Reemployment," June 2019. This form requires employers to certify that a retiree returning to employment with that participating employer did not have a prearranged agreement to return to work prior to retirement. This form was amended to remove the requirement that a member also had to complete the certification.

(c) Form 6752, "Employer Certification of Independent Contractor/Leased Employee," June 2019. This new form requires employers to provide information regarding the employment status of the retiree returning to employment with that participating employer. The form contains a series of questions and requests certain employment documentation to assist Kentucky Retirement Systems in ascertaining whether the retiree is an independent contractor/ leased employee or an employee of the participating employer.

(d) Form 6753, "Employer Certification of Volunteer," June 2019. This new form requires employers to provide information regarding the volunteer status of the retiree volunteering with that participating employer. The form contains a series of questions to assist Kentucky Retirement Systems in ascertaining whether the retiree is a volunteer or employee.

(e) Form 6754, "Member Reemployment Certification," June 2019. This new form requires retired members to provide information regarding their employment and volunteer status with a participating employer. The form contains a series of questions in order to properly notify Kentucky Retirement Systems of the member's reemployment.

There are nineteen (19) pages incorporated by reference.

Instructions for Completing Form 6756 Annual Employer Certification of Non-Contributing Service Providers

Pursuant to Kentucky Revised Statutes (KRS) 61.5991, this form shall be completed by each of the following employers participating in the Kentucky Employees Retirement System (KERS) nonhazardous plan for each fiscal year beginning with the 2021-2022 fiscal year:

- Local and district health departments governed by KRS Chapter 212,
- State supported universities and community colleges,
- Mental health/mental retardation boards,
- Domestic violence shelters,
- Rape crisis centers,
- Child advocacy centers, and
- Any other nonhazardous employer that is eligible to voluntarily cease participation in the KERS as provided by KRS 61.522.

(Collectively referred to as “employers.”)

All employers must submit this form each fiscal year. If the employer will not utilize non-contributing service providers during a specific fiscal year, the appropriate section of the form must be completed. If the employer submits this form and all documentation, and subsequently uses or hires one or more of the below-listed persons during a given fiscal year, then the employer should submit an updated form and documentation as soon as it is aware of the following:

- That it intends to use one or more independent contractors, leased employees (through a third party, staffing agency, or other non-participating entity), or persons working via any other employment arrangement who, if employed directly by the employer, would qualify as a regular full-time employee in accordance with KRS 61.510(21), or
- That it has directly employed one or more persons who meet the definition of a regular full-time employee in accordance with KRS 61.510(21), yet who have not/are not being reported in accordance with KRS 61.675.

A “regular full-time employee in accordance with KRS 61.510(21)” is defined as a person employed in a position that averages one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, except persons employed in one of the following positions:

- Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
- Emergency positions, which are positions which do not exceed thirty (30) working days and are nonrenewable;
- Temporary positions, which are positions of employment with a participating department for a period of time not to exceed nine (9) months and are nonrenewable;
- Part-time positions, which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; and
- Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months.



NOTICE OF EMPLOYER REQUIREMENTS

If an employer is not sure whether it is required to submit this form to the KPPA, or has questions about whether one or more persons providing services to the employer is exempted from the definition of regular full-time, the employer should contact its Employer Reporting, Compliance, & Education (ERCE) representative for assistance at 1-888-696-8810. If in doubt, the KPPA recommends including such persons on this form because an employer's failure to correctly submit such information may result in negative consequences to the employer and the person certifying this form. **Employers do not have discretion as to whether or not to submit this information to the KPPA as it is required by law. Before signing, employers should review the certification to understand the consequences for failing to submit complete, accurate information on this form and in accompanying documentation.** Within sixty (60) days following the close of each fiscal year occurring on or after July 1, 2021, the KPPA is required to provide extensive data on the response it has received from all affected KERS nonhazardous employers to the state budget director's office and the Legislative Research Commission, including any employer's noncompliance or failure to respond.

Required Documentation: In order for this form to be fully completed, both the form and additional documentation must be submitted for each individual listed on the form. Upon review, KPPA may request additional follow-up documentation.

1. If the employer has received one or more communication(s) from the KPPA or, prior to April 1, 2021, the Kentucky Retirement Systems concerning its independent contractors or leased employees, the employer must submit the relevant communication(s) with this form.
2. For each independent contractor, the following additional documentation must be submitted to the KPPA along with this completed form:
 - A copy of each contract between the employer and independent contractor,
 - Any other documentation explaining the services provided by each person serving as an independent contractor, and
 - Any other documentation explaining the compensation and benefits received by each person serving as an independent contractor in exchange for services provided to the employer.
3. For each third party, staffing company, and other non-participating entity through which persons who would otherwise meet the requirements of a regular full-time employee provide services for the KERS nonhazardous employer, the following additional documentation must be submitted to the KPPA along with this completed form:
 - A copy of each contract between the employer and third party, staffing company, or other non-participating entity,
 - Any other documentation explaining the services provided by each person working for a participating employer through a third party, staffing company, or other non-participating entity, and
 - Any other documentation explaining the compensation and benefits received by each person working through a third party, staffing company, or other non-participating entity in exchange for services provided by the person to the employer.
4. For each person providing services to the employer who the participating employer does not recognize as an employee, independent contractor, or leased employee (through a third party, staffing company, or other non-participating entity) and who would otherwise meet the requirements of a regular full-time employee, the following additional documentation must be submitted to the KPPA along with this completed form:
 - A copy of all documentation explaining the services provided to the participating employer,
 - A copy of all documentation explaining the relationship between the employer and persons who the participating employer does not recognize as an employee, independent contractor, or leased employee, and
 - A copy of all relevant documentation explaining the compensation and benefits received by each such person not recognized by the employer as an employee, independent contractor, or leased employee in exchange for services provided by the person to the employer.
5. For each person employed directly by the employer who meets the definition of a regular full-time employee in accordance with KRS 61.510(21) and who is not being reported in accordance with KRS 61.675, the employer must submit a Form 4225, Verification of Employment, for each person along with this completed form.

Reporting Determination

Following receipt by the KPPA of the completed form and accompanying documentation provided by the employer, the KPPA will determine whether any person for whom information is submitted by the KERS nonhazardous employer on this form should be reported to the KPPA as a regular full-time employee. In the event that the KPPA determines that any person should be reported to the KPPA as a regular full-time employee in KERS, the employer shall be required to report the person as an employee and pay employer contributions as appropriate on or after July 1, 2021 (but not prior to that date).



Form 6756
09/2021

Annual Employer Certification of Non-Contributing Service Providers

Employer Information

Employer:	Employer Code:
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This form is being completed for the 20__ - 20__ Fiscal Year.

Has the employer submitted a form already for this fiscal year? Yes No

Has the employer received one or more communication(s) from the Kentucky Public Pensions Authority (KPPA) or, prior to April 1, 2021, the Kentucky Retirement Systems concerning its independent contractors or leased employees? Yes No

If yes, check to indicate that the relevant communication(s) are submitted with this form.

Non-Contributing Service Providers (check only if the following statement is true)

The employer has/will not utilize any independent contractors, third party companies, staffing companies, other non-participating entities, or other persons who will provide services to the employer through any other arrangement and has no direct employees who meet the definition of a regular full-time employee pursuant to KRS 61.510(21) and who are not being reported to the KPPA in accordance with KRS 61.675: Check only if this statement is true.

Independent Contractors

The employer has utilized or will utilize independent contractors to provide services for the employer: Yes No

If yes, how many persons have or will be utilized as independent contractors: _____

Check to indicate that the relevant contract(s) and other documentation are submitted with this form.
(see *Instructions for other required documentation*)

If one or more independent contractors are used during this fiscal year and the employer is not submitting information regarding the independent contract(s) on this form because the relevant original contract, excluding any renewal period, was entered into prior to January 1, 2021, identify each original contract by listing (a) the parties to the contract, (b) the date the contract was entered, (c) the date range the contract is in effect, and (d) where a copy of the contract can be found (use additional pages if necessary):

If the employer is not submitting information on one or more independent contractors used during this fiscal year because one or more of these independent contractors provide professional services that have not historically been provided by employees of the employer, provide the following:

How many independent contractors used during this fiscal year is the employer not providing information for because the independent contractor(s) are providing professional services that have not historically been provided by employees of the employer? _____

Provide a brief explanation of how the professional services provided by the independent contractor(s) differ from professional services historically provided by employees of the employer (use additional pages if necessary):

Third Party, Staffing Company, or Other Non-Participating Entity

The employer has utilized or will utilize a third party, staffing company, or other non-participating entity to provide services for the employer: Yes No

If yes, complete the following:

Name all third party, staffing companies, or other non-participating entities and number of persons provided by each company: (Use additional pages as necessary to provide the names of all companies and the number of employees from each company provided to employer.)

Name of company: _____	Number of persons provided to employer: _____
Name of company: _____	Number of persons provided to employer: _____
Name of company: _____	Number of persons provided to employer: _____

Check to indicate that the relevant contract(s) and other documentation are submitted with this form. (see *Instructions for other required documentation*)

If one or more third party, staffing company, or other non-participating entity are used during this fiscal year and information on such an entity is not being submitted on this form because the relevant original contract, excluding any renewal period, was entered into prior to January 1, 2021, identify each original contract by listing (a) the parties to the contract, (b) the date the contract was entered, (c) the date range the contract is in effect, and (d) where a copy of the contract can be found (use additional pages if necessary):

If the employer is not submitting information on one or more persons performing services through a third party, staffing company, or other non-participating entity during this fiscal year because one or more of these persons provide professional services that have not historically been provided by employees of the employer, provide the following:

How many such persons used during this fiscal year is the employer not providing information for because the person(s) are providing professional services that have not historically been provided by employees of the employer? _____

Provide a brief explanation of how the professional services performed by the person(s) providing services through a third party, staffing company, or other non-participating entity differ from professional services historically provided by employees of the employer (use additional pages if necessary):

Person(s) Employer Does Not Recognize as an Employee, Independent Contractor, or Leased Employee

The employer has utilized or will utilize one or more persons who the employer does not recognize as an employee, independent contractor, or leased employee (through a third party, staffing company, or non-participating entity), but who provide services for the employer: Yes No

If yes, complete the following:

Provide the number of persons who the employer does not recognize as an employee, independent contractor, or leased employee (through a third party, staffing company, or non-participating entity), but who provides services for the employer: _____

Name each company or business name (if available) through which these persons provide services for the participating employer and the number of persons provided by each company or business to the employer. (Use additional pages as necessary to provide the names of all companies and the number of employees from each company provided to employer.)

Name of company: _____ Number of persons provided to employer: _____

Name of company: _____ Number of persons provided to employer: _____

Name of company: _____ Number of persons provided to employer: _____

Check to indicate that the relevant contract(s) and other documentation are submitted with this form. (see *Instructions for other required documentation*)

If one or more persons who the employer does not recognize as an employee, independent contractor, or leased employee are used during this fiscal year and are not included on this form because the relevant original contract, excluding any renewal period, was entered into prior to January 1, 2021, identify each original contract by listing (a) the parties to the contract, (b) the date the contract was entered, (c) the date range the contract is in effect, and (d) where a copy of the contract can be found (use additional pages if necessary):

If the employer is not submitting information on one or more persons the employer does not recognize as an employee, independent contractor, or leased employee who is providing services to the employer during this fiscal year because one or more of these persons provide professional services that have not historically been provided by employees of the employer, provide the following:

How many such persons used during this fiscal year is the employer not providing information for because the person(s) are providing professional services that have not historically been provided by employees of the employer? _____

Provide a brief explanation of how the professional services performed by the person(s) the employer does not recognize as an employee, independent contractor, or leased employee differ from professional services historically provided by employees of the employer (use additional pages if necessary):

Not Reported to the KPPA in accordance with KRS 61.675

The employer did not report to the KPPA in accordance with KRS 61.675 persons employed directly by the employer who meet the definition of a regular full-time employee in accordance with KRS 61.510(21): Yes No

If yes, check to indicate that a Form 4225, Verification of Employment, was submitted for each such person with this form.

Employer Certification

As the agency head, appointing authority, or authorized designee of a local or district health department governed by KRS Chapter 212, state supported university or community college, mental health/mental retardation board, domestic violence shelter, rape crisis center, child advocacy center, or another nonhazardous employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System (KERS) as provided by KRS 61.522, by signing this form I acknowledge the following:

- The employer participates in the KERS nonhazardous plan.
- On behalf of KERS, the Kentucky Public Pensions Authority (KPPA) may require additional information in order to process this form.
- If the employer subsequently uses or hires one or more independent contractors, leased employees (through a third party, staffing company, or other non-participating entity), or via any other arrangement during the fiscal year covered by this form, then the employer shall submit an updated form and documentation.
- The Kentucky Retirement Systems, responsible for the governance of KERS, and the KPPA have the exclusive authority to determine whether a person who has not been reported in KERS should be reported to in KERS as a regular full-time employee. Any relevant KERS nonhazardous employer shall be required to report the employee on or after July 1, 2021, and pay employer contributions after July 1, 2021.
- The KPPA has full power by statute to conduct an audit to ensure compliance and accuracy of the data required by this form. Upon finding in an audit that a KERS nonhazardous employer failed to file contributions for one or more employees in a regular full-time position required to participate in KERS pursuant to KRS 61.675 and/or KRS 61.5991, interest may be added to the contributions owed by the KERS nonhazardous employer.
- If the KPPA determines the participating employer for which I am signing on behalf of has knowingly falsified data or fails to submit information required the employer may face negative consequences, including, but not limited to ineligibility for any future appropriations or subsidies from the state to assist in paying employer contributions to the KPPA and/or back paying any appropriation or subsidies received from the state to assist in paying employer contributions.
- Effective June 28, 2021, the employer I am representing and I may be liable for civil payments, legal fees, and costs if found to possess or otherwise have custody or control of money or records "used or to be used by the [KPPA] or the systems it administers and fails to deliver or delivers less than all of the money [or] records" to the KPPA.
- I have full understanding that any person who provides a false statement, report, or representation is subject to penalty in accordance with KRS 523.100.

Printed Name: _____

Job Title: _____

Signature: _____

Date: _____

Alternate version of 105 KAR 1:450
and 105 KAR 1:450E (without HB
668)

1 FINANCE AND ADMINISTRATION CABINET

2 Kentucky Retirement Systems

3 (New Administrative Regulation)

4 105 KAR 1:450 Quasi-governmental employer reports on independent contractors and
5 leased employees.

6 RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

7 STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of
9 Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations
10 necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705 and
11 16.505 to 16.652, and to conform to federal statutes and regulations. KRS 61.5991
12 requires certain employers that participate in the Kentucky Employees Retirement
13 System to report information to the Kentucky Public Pensions Authority on some persons
14 providing services for the participating employer as an independent contractor, a leased
15 employee, or via any other similar employment arrangement.

16 Section 1. Definitions.

17 (1) Unless otherwise defined in this section, the definitions contained in KRS
18 61.510 shall apply to this administrative regulation.

19 (2) “Complete” means all required sections of a form are filled out, the form has
20 been fully executed by an agency head, appointing authority, or authorized designee

1 (such as the reporting official), and all supporting documentation required by the form is
2 included with the form.

3 (3) "Direct employment" means employees reported by the quasi-governmental
4 employer in accordance with KRS 61.675 and 105 KAR 1:140.

5 (4) "File" means a form has been received at the retirement office by mail, fax,
6 secure email, or in-person delivery or via Employer Self Service on the Web site
7 maintained by the agency (if available).

8 (5) "Independent contractor" means a person, either personally or through a
9 company or other legal entity, who provides services for a quasi-governmental employer
10 as an independent contractor.

11 (6) "KPPA" means the administrative staff of the Kentucky Public Pensions
12 Authority.

13 (7) "Leased employee" means a person who provides services for a quasi-
14 governmental employer as a leased employee through a staffing company.

15 (8) "Other employment arrangement" means any written agreement between a
16 quasi-governmental employer and a third party (including, but not limited to, a person,
17 company, or other legal entity) for one (1) or more persons to provide services for the
18 quasi-governmental employer in exchange for the third party receiving monetary
19 compensation, remuneration, or profit. "Other employment arrangement" does not include
20 direct employment or any written agreement for one (1) or more persons to provide
21 services to a quasi-governmental employer if the persons would not be in a regular full-
22 time position as defined in KRS 61.510(21) if the persons were directly employed by the
23 quasi-governmental employer.

1 (9) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately
2 prior to the fiscal year in which the KPPA provides the report to the state budget director's
3 office and the Legislative Research Commission required by KRS 61.5991(3).

4 (10) "Quasi-governmental employer" means an employer participating in the
5 Kentucky Employees Retirement System that is a local or district health department
6 governed by KRS Chapter 212, state-supported university or community college, mental
7 health/mental retardation board, domestic violence shelter, rape crisis center, child
8 advocacy center, or any other employer that is eligible to voluntarily cease participation
9 in the Kentucky Employees Retirement System as provided by KRS 61.522. For the
10 purpose of this administrative regulation, "quasi-governmental employer" does not
11 include county attorneys, the Kentucky Educational Television (KET) Foundation,
12 Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association
13 (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar
14 Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional
15 Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

16 Section 2. Required form for annual reporting.

17 (1)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers
18 shall report all persons providing services as independent contractors, leased employees,
19 or through any other employment arrangement by completing the Form 6756, Annual
20 Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at
21 the retirement office on or before May 2, 2022.

22 (b) Effective with the fiscal year beginning July 1, 2022, and for each fiscal year
23 thereafter, quasi-governmental employers shall report all persons providing services as

1 independent contractors, leased employees, or through any other employment
2 arrangement by completing the Form 6756, Annual Employer Certification of Non-
3 Contributing Service Providers, and filing the Form 6756 at the retirement office. For each
4 fiscal year beginning on or after July 1, 2022, the Form 6756 shall be filed at the retirement
5 office on or before April 15 of the fiscal year in which the Form 6756 is required.

6 (c) If a quasi-governmental employer contracts for any additional persons to
7 provide services as independent contractors, leased employees, or through any other
8 employment arrangement after the submission of a completed Form 6756, Annual
9 Employer Certification of Non-Contributing Service Providers, in accordance with
10 paragraph (a) or paragraph (b) of this subsection, but prior to the end of the fiscal year,
11 the quasi-governmental employer shall file at the retirement office a completed
12 supplemental Form 6756 reflecting only those persons not previously reported on the
13 initial Form 6756. The supplemental Form 6756 shall be filed at the retirement office on
14 or before June 30 of the fiscal year in which the Form 6756 is required.

15 (2)(a) Persons exempted under Sections 5 and 6 shall not be required to be listed
16 on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

17 (b) Persons providing services as independent contractors, leased employees, or
18 through any other employment arrangement who would not qualify as an employee in a
19 regular full-time position pursuant to KRS 61.510(21) if directly employed by the quasi-
20 governmental employer shall not be listed on the Form 6756, Annual Employer
21 Certification of Non-Contributing Service Providers.

22 (c) Persons providing services as independent contractors, leased employees, or
23 through any other employment arrangement who would be in a position reported to

1 another state-administered retirement system if directly employed by the quasi-
2 governmental employer shall not be listed on the Form 6756, Annual Employer
3 Certification of Non-Contributing Service Providers.

4 (3)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers
5 that do not file at the retirement office a completed Form 6756, Annual Employer
6 Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be
7 reported as noncompliant to the state budget director's office and the Legislative
8 Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

9 (b) For each fiscal year beginning on or after July 1, 2022, quasi-governmental
10 employers that do not file at the retirement office a completed Form 6756, Annual
11 Employer Certification of Non-Contributing Service Providers, as required by Section
12 2(1)(b) of this administrative regulation shall be reported as noncompliant to the state
13 budget director's office and the Legislative Research Commission in accordance with
14 KRS 61.5991(2)(c) and 61.5991(3)(d).

15 (4) If a quasi-governmental employer files at the retirement office an initial or
16 supplemental Form 6756, Annual Employer Certification of Non-Contributing Service
17 Providers, without the documentation required by the Form 6756, the Form 6756 shall not
18 be complete and the quasi-governmental employer shall be noncompliant in accordance
19 with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at
20 the retirement office by the appropriate deadline set forth in subsections (1), (2), and (5)
21 of this Section.

1 (5)(a) After receiving an initial or supplemental Form 6756, Annual Employer
2 Certification of Non-Contributing Service Providers, the KPPA may notify the quasi-
3 governmental employer that additional information is required.

4 (b) If additional information is required by the KPPA, the KPPA shall notify the
5 quasi-governmental employer in writing to the attention of the agency head, appointing
6 authority, or authorized designee, such as the reporting official, and shall include the
7 following in its notification:

8 1. A detailed description of the additional information required, and

9 2. A deadline by which the additional information required must be filed at the
10 retirement office, which shall not be less than fourteen (14) calendar days, but may be
11 longer than fourteen (14) calendar days.

12 (c) An initial or supplemental Form 6756, Annual Employer Certification of Non-
13 Contributing Service Providers, shall not be considered complete until all additional
14 information requested by the KPPA is on file at the retirement office.

15 (d) If a quasi-governmental employer fails to provide the additional information to
16 the KPPA by the deadline listed in the notification described in paragraph (b) of this
17 subsection or by the deadline agreed upon by the KPPA and the quasi-governmental
18 employer, then the quasi-governmental employer shall be reported as noncompliant to
19 the state budget director's office and the Legislative Research Commission in accordance
20 with KRS 61.5991(2)(c) and 61.5991(3)(d).

21 (6) During an audit of the quasi-governmental employer conducted in accordance
22 with KRS 61.675 and 61.685, if the KPPA discovers that a quasi-governmental employer
23 has failed to list all persons on a Form 6756, Annual Employer Certification of Non-

1 Contributing Service Providers, as required by this administrative regulation, then the
2 quasi-governmental employer shall be reported as noncompliant to the state budget
3 director's office and the Legislative Research Commission in accordance with KRS
4 61.5991(2)(c) and 61.5991(3)(d).

5 Section 3. Determination of employee or independent contractor.

6 (1) The KPPA shall have the authority to determine which persons listed on initial
7 and supplemental Form 6756s, Annual Employer Certification of Non-Contributing
8 Service Providers, should be reported as employees in regular full-time positions in
9 accordance with KRS 61.510(5), 61.510(21), and 61.5991(1)(d) and which persons listed
10 on the initial and supplemental Form 6756s, Annual Employer Certification of Non-
11 Contributing Service Providers, are independent contractors.

12 (2) The KPPA shall apply common law factors used by the Internal Revenue
13 Service to determine whether a person listed on the initial and supplemental Form 6756s,
14 Annual Employer Certification of Non-Contributing Service Providers, is an employee of
15 the quasi-governmental employer pursuant to KRS 61.510(5) and 61.5991(1)(d) or an
16 independent contractor of the quasi-governmental employer.

17 (3)(a) If the KPPA determines that a person listed on an initial or supplemental
18 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
19 employee of the quasi-governmental employer in a regular full-time position pursuant to
20 KRS 61.510(5), 61.510(21), and 61.5991(1)(d), then the quasi-governmental employer
21 shall remit all reports, records, contributions, and reimbursements for that person as an
22 employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR
23 1:140 effective the calendar month after the KPPA has notified the quasi-governmental

1 employer of its determination in accordance with Section 4 of this administrative
2 regulation. The quasi-governmental employer shall not be required to remit reports,
3 records, contributions, and reimbursements pursuant to KRS 61.675 and 105 KAR 1:140
4 for prior to July 1, 2021 for any person determined to be an employee in a regular full-
5 time position under this Section.

6 (b) 1. If the KPPA determines that a person listed on an initial or supplemental
7 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
8 employee of the quasi-governmental employer in a regular full-time position pursuant to
9 KRS 61.510(5), 61.510(21), and 61.5991(1)(d), then the quasi-governmental employer
10 shall be required to complete and file at the retirement office a Form 4225, Verification of
11 Past Employment, for that person for all periods occurring on or after July 1, 2021 during
12 which the person was providing services to the quasi-governmental employer.

13 2. If the KPPA determines that a person listed on an initial or supplemental Form
14 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
15 employee of the quasi-governmental employer in a regular full-time position pursuant to
16 KRS 61.510(5), 61.510(21), and 61.5991(1)(d), then the quasi-governmental employer
17 also shall be required to submit all relevant contracts and other documentation
18 demonstrating the relationship between the quasi-governmental employer and the person
19 for all periods occurring on or after July 1, 2021 during which the person was providing
20 services to the quasi-governmental employer.

21 (c) 1. After reviewing the information from the quasi-governmental employer
22 required by paragraph (b) of this subsection, if the KPPA determines that the person was
23 an employee in a regular full-time position pursuant to KRS 61.510(5), 61.510(21), and

1 61.5991(1)(d) for previous periods occurring on or after July 1, 2021 that were not
2 reported by the quasi-governmental employer in accordance with KRS 61.675, KRS
3 61.543, and 105 KAR 1:140, then the person shall be eligible to purchase omitted service
4 in accordance with KRS 61.552(2) for the periods of their previous employment by the
5 quasi-governmental employer in a regular full-time position occurring on or after July 1,
6 2021.

7 2. After reviewing the information from the quasi-governmental employer required
8 by paragraph (b) of this subsection, if the KPPA determines that the person was an
9 employee in a regular full-time position pursuant to KRS 61.510(5), 61.510(21), and
10 61.5991(1)(d) for previous periods occurring on or after July 1, 2021 that were not
11 reported by the quasi-governmental employer in accordance with KRS 61.675, KRS
12 61.543, and 105 KAR 1:140, then the quasi-governmental employer shall be responsible
13 for payment of delinquent omitted employer contributions in accordance with KRS
14 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the
15 quasi-governmental employer in a regular full-time position occurring on or after July 1,
16 2021.

17 (d)1. If the quasi-governmental employer does not list a person on an initial or
18 supplemental Form 6756, Annual Employer Certification of Non-Contributing Service
19 Providers, and the person is later determined to be an employee of the quasi-
20 governmental employer in a regular full-time position as a result of an audit conducted in
21 accordance with KRS 61.675(2) and 61.685, then the person shall be eligible to purchase
22 omitted service in accordance with KRS 61.552(2) for all employment in a regular full-

1 time position, regardless of whether the employment occurred before, on, or after July 1,
2 2021.

3 2. If the quasi-governmental employer does not list a person on an initial or
4 supplemental Form 6756, Annual Employer Certification of Non-Contributing Service
5 Providers, and the person is later determined to be an employee of the quasi-
6 governmental employer in a regular full-time position as a result of an audit conducted in
7 accordance with KRS 61.675(2) and 61.685, then the quasi-governmental employer shall
8 be responsible for payment of delinquent omitted employer contributions in accordance
9 with KRS 61.552(2) and 61.675(3)(b) for all the person’s employment in a regular full-
10 time position, regardless of whether the employment occurred before, on, or after July 1,
11 2021.

12 Section 4. Notification to employers of determination of employment relationship.

13 (1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year
14 thereafter, quasi-governmental employers shall be notified by the KPPA of the
15 determination of which persons should be reported as employees in regular full-time
16 positions in accordance with KRS 61.510(5), 61.510(21), and 61.5991(1)(d) no later than
17 the submission of the report to the state budget director’s office and the Legislative
18 Research Commission required by KRS 61.5991(3).

19 (2)(a) The KPPA shall notify the quasi-governmental employer of the determination
20 of which persons listed on an initial or supplemental Form 6756, Annual Employer
21 Certification of Non-Contributing Service Providers, should be reported as employees in
22 regular full-time positions in accordance with KRS 61.510(5), 61.510(21), and
23 61.5991(1)(d) in one (1) notification letter.

1 (b) The notification shall be sent to agency head, appointing authority, or
2 authorized designee, such as the reporting official.

3 (c) The notification shall include:

4 1. The name of each person who should be reported as an employee in regular
5 full-time position in accordance with KRS 61.675 and 105 KAR 1:140,

6 2. A description of the contract or other documents pursuant to which each person
7 who should be reported as an employee in a regular full-time position are providing or
8 have provided services to the quasi-governmental employer, and

9 3. A statement that all other persons listed on the initial or supplemental Form
10 6756, Annual Employer Certification of Non-Contributing Service Providers, should not
11 be reported as employees in regular full-time positions.

12 Section 5. Contracts for professional services that have not historically been provided by
13 employees.

14 (1) A quasi-governmental employer shall not be required to report a person on the
15 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:

16 (a) The person is providing professional services as an independent contractor,
17 leased employee, or through any other employment arrangement that have not been
18 performed by direct employees of the quasi-governmental employer since January 1,
19 2000, and

20 (b) The professional services have been performed or are being performed for the
21 quasi-governmental employer under a contract filed at the retirement office and
22 determined by the KPPA or the Kentucky Retirement Systems to represent services
23 provided by an independent contractor.

1 (2) Quasi-governmental employers may choose to report a person on the Form
2 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the
3 person is providing professional services under a contract that have not historically been
4 provided by employees.

5 Section 6. Original contracts entered prior to January 1, 2021.

6 (1) A quasi-governmental employer shall not be required to report a person on the
7 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
8 person is providing services to the quasi-governmental employer as an independent
9 contractor, leased employee, or through any other employment arrangement under an
10 original contract with the person or a company entered into prior to January 1, 2021,
11 unless one of the exceptions in subsections (2), (3), or (4) of this Section applies.

12 (2) A quasi-governmental employer shall be required to report a person on the
13 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
14 person is providing services to the quasi-governmental employer as an independent
15 contractor, leased employee, or through any other employment arrangement under an
16 original contract with the person or a company entered into prior to January 1, 2021 if the
17 term of the original contract has expired and the contract has been renewed or continued.

18 (3) A quasi-governmental employer shall be required to report a person on the
19 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
20 person is providing services to the quasi-governmental employer as an independent
21 contractor, leased employee, or through any other employment arrangement under an
22 original contract with the person or a company entered into prior to January 1, 2021 if the
23 contract has been modified to encompass different services.

1 (4) A quasi-governmental employer shall be required to report a person on the
2 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
3 person is providing services to the quasi-governmental employer as an independent
4 contractor, leased employee, or through any other employment arrangement under an
5 original contract with a company entered into prior to January 1, 2021 if the person was
6 not included in the original contract.

7 (5) Quasi-governmental employers may choose to report a person on the Form
8 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the
9 person is providing services to the quasi-governmental employer as an independent
10 contractor, leased employee, or through any other employment arrangement under an
11 original contract with the person or a company entered into prior to January 1, 2021.

12 Section 7. Report to the state budget director's office and the Legislative Research
13 Commission.

14 (1)(a) To determine the number of employees of the quasi-governmental employer
15 reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the KPPA shall
16 add together all employees in regular full-time positions reported by the quasi-
17 governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal
18 year.

19 (b) Persons listed on an initial or supplemental Form 6756, Annual Employer Certification
20 of Non-Contributing Service Providers, for the prior fiscal year who are ultimately
21 determined by the KPPA to be employees of the quasi-governmental employer in regular
22 full-time positions shall not be included in the number of employees of the quasi-
23 governmental employer for the prior fiscal year. Such persons may be included in the

1 number of employees of the quasi-governmental employer for a subsequent fiscal year if
2 the person is reported by the quasi-governmental employer in the subsequent fiscal year
3 as an employee in a regular full-time position in accordance with KRS 61.675 and 105
4 KAR 1:140.

5 (2) To determine the number of persons providing services to the quasi-governmental
6 employer who were not reported for the prior fiscal year in accordance with KRS
7 61.5991(3)(b), the KPPA shall use the total number of persons listed on initial and
8 supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service
9 Providers, for the prior fiscal year.

10 (3) The KPPA shall report the following information for each quasi-governmental
11 employer determined to have falsified data or been noncompliant in accordance with KRS
12 61.5991(3)(d):

13 (a) The name of the quasi-governmental employer,

14 (b) A description of the type of data falsified and the support the KPPA has for believing
15 the data to be falsified, if applicable, and

16 (c) A description of the nature of the noncompliance, if applicable.

17 Section 8. Incorporation by Reference.

18 (1) Form 6756, "Annual Employer Certification of Non-Contributing Service
19 Providers," dated September 2021, is incorporated by reference.

20 (2) This material may be inspected, copied, or obtained, subject to applicable
21 copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort,
22 Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also
23 available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

APPROVED:

JOHN CHILTON
CHIEF EXECUTIVE OFFICER
KENTUCKY RETIREMENT SYSTEMS

DATE

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 26, 2022 at 2:00 p.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, KY 40601, email Legal.Non-Advocacy@kyret.ky.gov, telephone (502) 696-8800 ext. 8647, facsimile (502) 696-8801.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Regulation number: 105 KAR 1:450
Contact person: Michael Board
Phone number: 502-696-8800 ext. 8647
Email: Legal.Non-Advocacy@kyret.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5), 61.510(21), and 61.5991(1)(d) the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions for period occurring on or after July 1, 2021 as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for regulated entities is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6).

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation number: 105 KAR 1:450
Contact person: Michael Board
Phone number: 502-696-8800 ext. 8647
Email: Legal.Non-Advocacy@kyret.ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). Additionally, this administrative regulation impacts the KPPA and the Kentucky Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to the KPPA to administer this administrative regulation in the first year should be minimal.

(d) How much will it cost to administer this program for subsequent years? The cost to the KPPA to administer this administrative regulation in subsequent years should be negligible.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5), 61.510(21), and 61.5991(1)(d) shall be treated prospectively from the determination as “employees” in accordance with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions for period of employment occurring on or after July 1, 2021 as required by KRS 61.552 and 61.675.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The Form 6756, "Annual Employer Certification of Non-Contributing Service Providers," dated September 2021, is the six (6) page form that certain quasi-governmental employers are required to submit annually in accordance with KRS 61.5991. KRS 61.5991 requires certain quasi-governmental employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority (KPPA) on some persons providing services for the quasi-governmental employer as an independent contractor, a leased employee, or via any other similar employment arrangement in the format, detail, and frequency determined by the KPPA.

1 FINANCE AND ADMINISTRATION CABINET

2 Kentucky Retirement Systems

3 (New Emergency Administrative Regulation)

4 105 KAR 1:450E Quasi-governmental employer reports on independent contractors and
5 leased employees.

6 RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

7 STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of
9 Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations
10 necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705 and
11 16.505 to 16.652, and to conform to federal statutes and regulations. KRS 61.5991
12 requires certain employers that participate in the Kentucky Employees Retirement
13 System to report information to the Kentucky Public Pensions Authority on some persons
14 providing services for the participating employer as an independent contractor, a leased
15 employee, or via any other similar employment arrangement.

16 Section 1. Definitions.

17 (1) Unless otherwise defined in this section, the definitions contained in KRS
18 61.510 shall apply to this administrative regulation.

19 (2) “Complete” means all required sections of a form are filled out, the form has
20 been fully executed by an agency head, appointing authority, or authorized designee

1 (such as the reporting official), and all supporting documentation required by the form is
2 included with the form.

3 (3) "Direct employment" means employees reported by the quasi-governmental
4 employer in accordance with KRS 61.675 and 105 KAR 1:140.

5 (4) "File" means a form has been received at the retirement office by mail, fax,
6 secure email, or in-person delivery or via Employer Self Service on the Web site
7 maintained by the agency (if available).

8 (5) "Independent contractor" means a person, either personally or through a
9 company or other legal entity, who provides services for a quasi-governmental employer
10 as an independent contractor.

11 (6) "KPPA" means the administrative staff of the Kentucky Public Pensions
12 Authority.

13 (7) "Leased employee" means a person who provides services for a quasi-
14 governmental employer as a leased employee through a staffing company.

15 (8) "Other employment arrangement" means any written agreement between a
16 quasi-governmental employer and a third party (including, but not limited to, a person,
17 company, or other legal entity) for one (1) or more persons to provide services for the
18 quasi-governmental employer in exchange for the third party receiving monetary
19 compensation, remuneration, or profit. "Other employment arrangement" does not include
20 direct employment or any written agreement for one (1) or more persons to provide
21 services to a quasi-governmental employer if the persons would not be in a regular full-
22 time position as defined in KRS 61.510(21) if the persons were directly employed by the
23 quasi-governmental employer.

1 (9) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately
2 prior to the fiscal year in which the KPPA provides the report to the state budget director's
3 office and the Legislative Research Commission required by KRS 61.5991(3).

4 (10) "Quasi-governmental employer" means an employer participating in the
5 Kentucky Employees Retirement System that is a local or district health department
6 governed by KRS Chapter 212, state-supported university or community college, mental
7 health/mental retardation board, domestic violence shelter, rape crisis center, child
8 advocacy center, or any other employer that is eligible to voluntarily cease participation
9 in the Kentucky Employees Retirement System as provided by KRS 61.522. For the
10 purpose of this administrative regulation, "quasi-governmental employer" does not
11 include county attorneys, the Kentucky Educational Television (KET) Foundation,
12 Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association
13 (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar
14 Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional
15 Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

16 Section 2. Required form for annual reporting.

17 (1)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers
18 shall report all persons providing services as independent contractors, leased employees,
19 or through any other employment arrangement by completing the Form 6756, Annual
20 Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at
21 the retirement office on or before May 2, 2022.

22 (b) Effective with the fiscal year beginning July 1, 2022, and for each fiscal year
23 thereafter, quasi-governmental employers shall report all persons providing services as

1 independent contractors, leased employees, or through any other employment
2 arrangement by completing the Form 6756, Annual Employer Certification of Non-
3 Contributing Service Providers, and filing the Form 6756 at the retirement office. For each
4 fiscal year beginning on or after July 1, 2022, the Form 6756 shall be filed at the retirement
5 office on or before April 15 of the fiscal year in which the Form 6756 is required.

6 (c) If a quasi-governmental employer contracts for any additional persons to
7 provide services as independent contractors, leased employees, or through any other
8 employment arrangement after the submission of a completed Form 6756, Annual
9 Employer Certification of Non-Contributing Service Providers, in accordance with
10 paragraph (a) or paragraph (b) of this subsection, but prior to the end of the fiscal year,
11 the quasi-governmental employer shall file at the retirement office a completed
12 supplemental Form 6756 reflecting only those persons not previously reported on the
13 initial Form 6756. The supplemental Form 6756 shall be filed at the retirement office on
14 or before June 30 of the fiscal year in which the Form 6756 is required.

15 (2)(a) Persons exempted under Sections 5 and 6 shall not be required to be listed
16 on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

17 (b) Persons providing services as independent contractors, leased employees, or
18 through any other employment arrangement who would not qualify as an employee in a
19 regular full-time position pursuant to KRS 61.510(21) if directly employed by the quasi-
20 governmental employer shall not be listed on the Form 6756, Annual Employer
21 Certification of Non-Contributing Service Providers.

22 (c) Persons providing services as independent contractors, leased employees, or
23 through any other employment arrangement who would be in a position reported to

1 another state-administered retirement system if directly employed by the quasi-
2 governmental employer shall not be listed on the Form 6756, Annual Employer
3 Certification of Non-Contributing Service Providers.

4 (3)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers
5 that do not file at the retirement office a completed Form 6756, Annual Employer
6 Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be
7 reported as noncompliant to the state budget director's office and the Legislative
8 Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

9 (b) For each fiscal year beginning on or after July 1, 2022, quasi-governmental
10 employers that do not file at the retirement office a completed Form 6756, Annual
11 Employer Certification of Non-Contributing Service Providers, as required by Section
12 2(1)(b) of this administrative regulation shall be reported as noncompliant to the state
13 budget director's office and the Legislative Research Commission in accordance with
14 KRS 61.5991(2)(c) and 61.5991(3)(d).

15 (4) If a quasi-governmental employer files at the retirement office an initial or
16 supplemental Form 6756, Annual Employer Certification of Non-Contributing Service
17 Providers, without the documentation required by the Form 6756, the Form 6756 shall not
18 be complete and the quasi-governmental employer shall be noncompliant in accordance
19 with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at
20 the retirement office by the appropriate deadline set forth in subsections (1), (2), and (5)
21 of this Section.

1 (5)(a) After receiving an initial or supplemental Form 6756, Annual Employer
2 Certification of Non-Contributing Service Providers, the KPPA may notify the quasi-
3 governmental employer that additional information is required.

4 (b) If additional information is required by the KPPA, the KPPA shall notify the
5 quasi-governmental employer in writing to the attention of the agency head, appointing
6 authority, or authorized designee, such as the reporting official, and shall include the
7 following in its notification:

8 1. A detailed description of the additional information required, and

9 2. A deadline by which the additional information required must be filed at the
10 retirement office, which shall not be less than fourteen (14) calendar days, but may be
11 longer than fourteen (14) calendar days.

12 (c) An initial or supplemental Form 6756, Annual Employer Certification of Non-
13 Contributing Service Providers, shall not be considered complete until all additional
14 information requested by the KPPA is on file at the retirement office.

15 (d) If a quasi-governmental employer fails to provide the additional information to
16 the KPPA by the deadline listed in the notification described in paragraph (b) of this
17 subsection or by the deadline agreed upon by the KPPA and the quasi-governmental
18 employer, then the quasi-governmental employer shall be reported as noncompliant to
19 the state budget director's office and the Legislative Research Commission in accordance
20 with KRS 61.5991(2)(c) and 61.5991(3)(d).

21 (6) During an audit of the quasi-governmental employer conducted in accordance
22 with KRS 61.675 and 61.685, if the KPPA discovers that a quasi-governmental employer
23 has failed to list all persons on a Form 6756, Annual Employer Certification of Non-

1 Contributing Service Providers, as required by this administrative regulation, then the
2 quasi-governmental employer shall be reported as noncompliant to the state budget
3 director's office and the Legislative Research Commission in accordance with KRS
4 61.5991(2)(c) and 61.5991(3)(d).

5 Section 3. Determination of employee or independent contractor.

6 (1) The KPPA shall have the authority to determine which persons listed on initial
7 and supplemental Form 6756s, Annual Employer Certification of Non-Contributing
8 Service Providers, should be reported as employees in regular full-time positions in
9 accordance with KRS 61.510(5), 61.510(21), and 61.5991(1)(d) and which persons listed
10 on the initial and supplemental Form 6756s, Annual Employer Certification of Non-
11 Contributing Service Providers, are independent contractors.

12 (2) The KPPA shall apply common law factors used by the Internal Revenue
13 Service to determine whether a person listed on the initial and supplemental Form 6756s,
14 Annual Employer Certification of Non-Contributing Service Providers, is an employee of
15 the quasi-governmental employer pursuant to KRS 61.510(5) and 61.5991(1)(d) or an
16 independent contractor of the quasi-governmental employer.

17 (3)(a) If the KPPA determines that a person listed on an initial or supplemental
18 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
19 employee of the quasi-governmental employer in a regular full-time position pursuant to
20 KRS 61.510(5), 61.510(21), and 61.5991(1)(d), then the quasi-governmental employer
21 shall remit all reports, records, contributions, and reimbursements for that person as an
22 employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR
23 1:140 effective the calendar month after the KPPA has notified the quasi-governmental

1 employer of its determination in accordance with Section 4 of this administrative
2 regulation. The quasi-governmental employer shall not be required to remit reports,
3 records, contributions, and reimbursements pursuant to KRS 61.675 and 105 KAR 1:140
4 for prior to July 1, 2021 for any person determined to be an employee in a regular full-
5 time position under this Section.

6 (b) 1. If the KPPA determines that a person listed on an initial or supplemental
7 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
8 employee of the quasi-governmental employer in a regular full-time position pursuant to
9 KRS 61.510(5), 61.510(21), and 61.5991(1)(d), then the quasi-governmental employer
10 shall be required to complete and file at the retirement office a Form 4225, Verification of
11 Past Employment, for that person for all periods occurring on or after July 1, 2021 during
12 which the person was providing services to the quasi-governmental employer.

13 2. If the KPPA determines that a person listed on an initial or supplemental Form
14 6756, Annual Employer Certification of Non-Contributing Service Providers, is an
15 employee of the quasi-governmental employer in a regular full-time position pursuant to
16 KRS 61.510(5), 61.510(21), and 61.5991(1)(d), then the quasi-governmental employer
17 also shall be required to submit all relevant contracts and other documentation
18 demonstrating the relationship between the quasi-governmental employer and the person
19 for all periods occurring on or after July 1, 2021 during which the person was providing
20 services to the quasi-governmental employer.

21 (c) 1. After reviewing the information from the quasi-governmental employer
22 required by paragraph (b) of this subsection, if the KPPA determines that the person was
23 an employee in a regular full-time position pursuant to KRS 61.510(5), 61.510(21), and

1 61.5991(1)(d) for previous periods occurring on or after July 1, 2021 that were not
2 reported by the quasi-governmental employer in accordance with KRS 61.675, KRS
3 61.543, and 105 KAR 1:140, then the person shall be eligible to purchase omitted service
4 in accordance with KRS 61.552(2) for the periods of their previous employment by the
5 quasi-governmental employer in a regular full-time position occurring on or after July 1,
6 2021.

7 2. After reviewing the information from the quasi-governmental employer required
8 by paragraph (b) of this subsection, if the KPPA determines that the person was an
9 employee in a regular full-time position pursuant to KRS 61.510(5), 61.510(21), and
10 61.5991(1)(d) for previous periods occurring on or after July 1, 2021 that were not
11 reported by the quasi-governmental employer in accordance with KRS 61.675, KRS
12 61.543, and 105 KAR 1:140, then the quasi-governmental employer shall be responsible
13 for payment of delinquent omitted employer contributions in accordance with KRS
14 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the
15 quasi-governmental employer in a regular full-time position occurring on or after July 1,
16 2021.

17 (d)1. If the quasi-governmental employer does not list a person on an initial or
18 supplemental Form 6756, Annual Employer Certification of Non-Contributing Service
19 Providers, and the person is later determined to be an employee of the quasi-
20 governmental employer in a regular full-time position as a result of an audit conducted in
21 accordance with KRS 61.675(2) and 61.685, then the person shall be eligible to purchase
22 omitted service in accordance with KRS 61.552(2) for all employment in a regular full-

1 time position, regardless of whether the employment occurred before, on, or after July 1,
2 2021.

3 2. If the quasi-governmental employer does not list a person on an initial or
4 supplemental Form 6756, Annual Employer Certification of Non-Contributing Service
5 Providers, and the person is later determined to be an employee of the quasi-
6 governmental employer in a regular full-time position as a result of an audit conducted in
7 accordance with KRS 61.675(2) and 61.685, then the quasi-governmental employer shall
8 be responsible for payment of delinquent omitted employer contributions in accordance
9 with KRS 61.552(2) and 61.675(3)(b) for all the person's employment in a regular full-
10 time position, regardless of whether the employment occurred before, on, or after July 1,
11 2021.

12 Section 4. Notification to employers of determination of employment relationship.

13 (1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year
14 thereafter, quasi-governmental employers shall be notified by the KPPA of the
15 determination of which persons should be reported as employees in regular full-time
16 positions in accordance with KRS 61.510(5), 61.510(21), and 61.5991(1)(d) no later than
17 the submission of the report to the state budget director's office and the Legislative
18 Research Commission required by KRS 61.5991(3).

19 (2)(a) The KPPA shall notify the quasi-governmental employer of the determination
20 of which persons listed on an initial or supplemental Form 6756, Annual Employer
21 Certification of Non-Contributing Service Providers, should be reported as employees in
22 regular full-time positions in accordance with KRS 61.510(5), 61.510(21), and
23 61.5991(1)(d) in one (1) notification letter.

1 (b) The notification shall be sent to agency head, appointing authority, or
2 authorized designee, such as the reporting official.

3 (c) The notification shall include:

4 1. The name of each person who should be reported as an employee in regular
5 full-time position in accordance with KRS 61.675 and 105 KAR 1:140,

6 2. A description of the contract or other documents pursuant to which each person
7 who should be reported as an employee in a regular full-time position are providing or
8 have provided services to the quasi-governmental employer, and

9 3. A statement that all other persons listed on the initial or supplemental Form
10 6756, Annual Employer Certification of Non-Contributing Service Providers, should not
11 be reported as employees in regular full-time positions.

12 Section 5. Contracts for professional services that have not historically been provided by
13 employees.

14 (1) A quasi-governmental employer shall not be required to report a person on the
15 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:

16 (a) The person is providing professional services as an independent contractor,
17 leased employee, or through any other employment arrangement that have not been
18 performed by direct employees of the quasi-governmental employer since January 1,
19 2000, and

20 (b) The professional services have been performed or are being performed for the
21 quasi-governmental employer under a contract filed at the retirement office and
22 determined by the KPPA or the Kentucky Retirement Systems to represent services
23 provided by an independent contractor.

1 (2) Quasi-governmental employers may choose to report a person on the Form
2 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the
3 person is providing professional services under a contract that have not historically been
4 provided by employees.

5 Section 6. Original contracts entered prior to January 1, 2021.

6 (1) A quasi-governmental employer shall not be required to report a person on the
7 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
8 person is providing services to the quasi-governmental employer as an independent
9 contractor, leased employee, or through any other employment arrangement under an
10 original contract with the person or a company entered into prior to January 1, 2021,
11 unless one of the exceptions in subsections (2), (3), or (4) of this Section applies.

12 (2) A quasi-governmental employer shall be required to report a person on the
13 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
14 person is providing services to the quasi-governmental employer as an independent
15 contractor, leased employee, or through any other employment arrangement under an
16 original contract with the person or a company entered into prior to January 1, 2021 if the
17 term of the original contract has expired and the contract has been renewed or continued.

18 (3) A quasi-governmental employer shall be required to report a person on the
19 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
20 person is providing services to the quasi-governmental employer as an independent
21 contractor, leased employee, or through any other employment arrangement under an
22 original contract with the person or a company entered into prior to January 1, 2021 if the
23 contract has been modified to encompass different services.

1 (4) A quasi-governmental employer shall be required to report a person on the
2 Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the
3 person is providing services to the quasi-governmental employer as an independent
4 contractor, leased employee, or through any other employment arrangement under an
5 original contract with a company entered into prior to January 1, 2021 if the person was
6 not included in the original contract.

7 (5) Quasi-governmental employers may choose to report a person on the Form
8 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the
9 person is providing services to the quasi-governmental employer as an independent
10 contractor, leased employee, or through any other employment arrangement under an
11 original contract with the person or a company entered into prior to January 1, 2021.

12 Section 7. Report to the state budget director's office and the Legislative Research
13 Commission.

14 (1)(a) To determine the number of employees of the quasi-governmental employer
15 reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the KPPA shall
16 add together all employees in regular full-time positions reported by the quasi-
17 governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal
18 year.

19 (b) Persons listed on an initial or supplemental Form 6756, Annual Employer Certification
20 of Non-Contributing Service Providers, for the prior fiscal year who are ultimately
21 determined by the KPPA to be employees of the quasi-governmental employer in regular
22 full-time positions shall not be included in the number of employees of the quasi-
23 governmental employer for the prior fiscal year. Such persons may be included in the

1 number of employees of the quasi-governmental employer for a subsequent fiscal year if
2 the person is reported by the quasi-governmental employer in the subsequent fiscal year
3 as an employee in a regular full-time position in accordance with KRS 61.675 and 105
4 KAR 1:140.

5 (2) To determine the number of persons providing services to the quasi-governmental
6 employer who were not reported for the prior fiscal year in accordance with KRS
7 61.5991(3)(b), the KPPA shall use the total number of persons listed on initial and
8 supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service
9 Providers, for the prior fiscal year.

10 (3) The KPPA shall report the following information for each quasi-governmental
11 employer determined to have falsified data or been noncompliant in accordance with KRS
12 61.5991(3)(d):

- 13 (a) The name of the quasi-governmental employer,
- 14 (b) A description of the type of data falsified and the support the KPPA has for believing
15 the data to be falsified, if applicable, and
- 16 (c) A description of the nature of the noncompliance, if applicable.

17 Section 8. Incorporation by Reference.

18 (1) Form 6756, "Annual Employer Certification of Non-Contributing Service
19 Providers," dated September 2021, is incorporated by reference.

20 (2) This material may be inspected, copied, or obtained, subject to applicable
21 copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort,
22 Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also
23 available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

APPROVED:

JOHN CHILTON
CHIEF EXECUTIVE OFFICER
KENTUCKY RETIREMENT SYSTEMS

DATE

PUBLIC HEARING: A public hearing on this emergency administrative regulation shall be held on Tuesday, June 28, 2022 at 10:00 a.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Written comments shall be accepted until June 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, KY 40601, email Legal.Non-Advocacy@kyret.ky.gov, telephone (502) 696-8800 ext. 8647, facsimile (502) 696-8801.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Regulation number: 105 KAR 1:450E
Contact person: Michael Board
Phone number: 502-696-8800 ext. 8647
Email: Legal.Non-Advocacy@kyret.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5), 61.510(21), and 61.5991(1)(d) the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions for period occurring on or after July 1, 2021 as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for regulated entities is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6).

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation number: 105 KAR 1:450E
Contact person: Michael Board
Phone number: 502-696-8800 ext. 8647
Email: Legal.Non-Advocacy@kyret.ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). Additionally, this administrative regulation impacts the KPPA and the Kentucky Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to the KPPA to administer this administrative regulation in the first year should be minimal.

(d) How much will it cost to administer this program for subsequent years? The cost to the KPPA to administer this administrative regulation in subsequent years should be negligible.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5), 61.510(21), and 61.5991(1)(d) shall be treated prospectively from the determination as “employees” in accordance with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions for period of employment occurring on or after July 1, 2021 as required by KRS 61.552 and 61.675.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The Form 6756, "Annual Employer Certification of Non-Contributing Service Providers," dated September 2021, is the six (6) page form that certain quasi-governmental employers are required to submit annually in accordance with KRS 61.5991. KRS 61.5991 requires certain quasi-governmental employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority (KPPA) on some persons providing services for the quasi-governmental employer as an independent contractor, a leased employee, or via any other similar employment arrangement in the format, detail, and frequency determined by the KPPA.



KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

1260 Louisville Road • Frankfort, Kentucky 40601
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Kentucky Public
Pensions Authority

To: Kentucky Retirement Systems Board of Trustees

From: Betty Pendergrass, CPA, CGFM, Chair
Joint Audit Committee

Lynn Hampton, Vice Chair
Joint Audit Committee

Kristen N. Coffey, CICA *KNC*
Division Director, Internal Audit Administration

Date: April 12, 2022

Subject: Summary of Joint Audit Committee Meeting

The County Employees Retirement System (CERS) and Kentucky Retirement Systems (KRS) Joint Audit Committee held a special called meeting on April 7, 2022.

1. During completion of prior audits, additional risks related to the areas under review were brought to the attention of internal audit staff. These additional risks need to be reviewed as soon as possible in order to ensure additional recommendations are communicated to KPPA staff timely. We are requesting that the KRS Board of Trustees ratify these additions so that audit staff can begin immediately reviewing these new risks and making necessary recommendations.
 - a. **Additions to the Annual Audit Plan (see attached Audit Committee memo) – Seven audits have been added to the prior approved audit plan.* – The Joint Audit Committee approved the additions to the audit plan as submitted and recommended submitting the plan to KPPA for review. *Passed unanimously.***

RECOMMENDATION: We request the KRS Board of Trustees ratify the actions taken by the Joint Audit Committee and recommend that the KPPA representatives on the KRS Board take these items to KPPA for consideration.

2. The Plan Liquidity Audit was presented and discussed. It will be discussed further at the next Audit Committee meeting on May 24, 2022.
3. The following other items were also discussed during the Joint Audit Committee meeting. These are presented for informational purposes only.
 - a. Internal Audit Budget – *50.21% of budget remaining.*
 - b. Status of current internal audits – *23 current projects and 18 completed projects.*

***Board of Trustees action may be required**

Attachment



Kentucky Public Pensions Authority

Internal Audit Administration



To: Members of the Joint Audit Committee

From: Kristen N. Coffey, CICA *KNC*
Division Director, Internal Audit Administration

Date: April 7, 2022

Subject: Additions to the Internal Audit Plan

The Division of Internal Audit Administration (Division) has authority to look at all areas of operation within the Kentucky Public Pensions Authority (KPPA). The goal of the Division is to ensure areas are complying with established regulations as well as to suggest ways to increase the efficiency of processes. The Division works with the Joint Audit Committee as well as the Executive Management teams of KPPA, the County Employees Retirement System (CERS), and the Kentucky Retirement Systems (KRS) to identify the highest risk areas. The Division is currently working on an overall agency Risk Assessment. Once that Risk Assessment is completed, an Audit Plan will be presented for approval.

During audits, Division staff routinely make recommendations for future audit consideration. The following items have been identified as areas of potential risk and the Division is requesting approval to add these to the current audit plan.

1. Review of all JP Morgan Chase accounts.
 - There are several bank accounts kept at JP Morgan Chase. This audit would include documenting the purpose of each account, reviewing the cash flows in and out of the accounts, assessing how the funds available in the account are handled at year-end, and determining how the balances in these accounts are reported to management and the Boards.
2. Review of Administrative Expenses, including plan specific expenses.
 - Administrative expenses are shared between CERS and KRS. This audit would look at how the administrative expenses are allocated. This process is still in development. We would perform this audit after the process is officially in place.
3. Review of the employer contribution process, including the balancing process.
 - Employers submit contributions to KPPA each month. This audit would include recalculating the amount of the contribution owed to KPPA, verifying that the amounts received are accurate, and documenting how amounts received are balanced.
4. Review of cash receipt process.
 - The KPPA office still receives checks for some payments. This audit would look at how KPPA handles receipt of the checks to ensure the checks are deposited timely and stored securely. In addition to working with the Division of Accounting, this audit would include speaking to other divisions who have reported that checks are occasionally received by their staff.

5. Review of investment manager and performance fee reconciliations.
 - KPPA pays various fees to investment managers. This audit would recalculate the amount of the fee owed and ensure the proper amount was paid. It would also look at the review process for these payments. These amounts are posted to the KPPA website. As a part of this audit, we would ensure the amount posted on the website accurately reflects the amount paid.
6. Review of the investment reconciliation between BNY Mellon and Great Plains.
 - Investment related information from BNY Mellon is uploaded into the general ledger, which is used in the generation of the KPPA financial statements. This audit would reconcile the information in the general ledger to BNY Mellon to ensure it is accurate.
7. Review of the process for investing direct repo.
 - Investment directors follow a process to calculate the repo for each day. This audit would look at the documented process and ensure it is up-to-date with current practices. This audit would also look at the approval process for these transactions.

On February 11, Internal Audit staff requested to add to the current audit plan a review of the process followed by KPPA staff to update an individual's death status in the KPPA system. Approval to begin this audit was granted on February 14 and this audit is currently in progress.

Action Needed: We request the Joint Audit Committee approve the additions to the current Audit Plan.